16B Am. Jur. 2d Constitutional Law XIII A Refs.

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

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Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3005, 3006, 3010 to 3015, 3020 to 3027, 3030 to 3047, 3250 to 3310, 3463, 3495 to 3517, 4857

A.L.R. Library

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16B Am. Jur. 2d Constitutional Law § 817

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 817. Mandate of equal protection, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006

The 14th Amendment to the United States Constitution provides no state shall deny to any person within its jurisdiction the equal protection of the laws.[1] This provision of the 14th Amendment, known as the Equal Protection Clause,[2] is essentially a mandate or direction that all persons similarly situated should be treated alike.[3]

Observation:

Many state constitutions contain equal protection clauses which are substantially[4] or functionally equivalent to the Equal Protection Clause of the Federal Constitution.[5] Like the Equal Protection Clause of the Federal Constitution, a state's constitutional promise of equal protection is essentially a direction that all persons similarly situated should be treated alike.[6]

Footnotes

1 U.S. Const. Amend. XIV, § 1.

2 Mehta v. Village of Bolingbrook, 196 F. Supp. 3d 855 (N.D. Ill. 2016).

3 Bowen v. Gilliard, 483 U.S. 587, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987); City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); Club Retro, L.L.C. v. Hilton, 568 F.3d 181 (5th Cir. 2009); Whitaker By Whitaker v. Kenosha Unified School District No. 1 Board of Education, 858 F.3d 1034, 343 Ed. Law Rep. 672 (7th Cir. 2017), cert. dismissed, 138 S. Ct. 1260, 200 L. Ed. 2d 415 (2018); Leib v. Hillsborough County Public Transp. Com'n, 558 F.3d 1301 (11th Cir. 2009); Poche v. Gautreaux, 973 F. Supp. 2d 658 (M.D. La. 2013); State v. Dudley, 766 N.W.2d 606 (Iowa 2009); Cain v. Lodestar Energy, Inc., 302 S.W.3d 39 (Ky. 2009).

4 People v. K.P., 30 Cal. App. 5th 331, 241 Cal. Rptr. 3d 324 (4th Dist. 2018), review denied (Apr. 10, 2019); Lewis v. Chatham County Bd. of Com'rs, 298 Ga. 73, 779 S.E.2d 371 (2015).

5 State v. Aalim, 150 Ohio St. 3d 489, 2017-Ohio-2956, 83 N.E.3d 883 (2017); State v. Jagger, 149 Wash. App. 525, 204 P.3d 267 (Div. 2 2009).

6 Biswas v. City of New York, 973 F. Supp. 2d 504, 303 Ed. Law Rep. 231 (S.D. N.Y. 2013) (construing New York Constitution); Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors, 205 P.3d 326 (Alaska 2009); DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC., 134 Haw. 187, 339 P.3d 685 (2014); Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 (2009); Town & Country Foods, Inc. v. City of Bozeman, 2009 MT 72, 349 Mont. 453, 203 P.3d 1283 (2009); In re Concord Teachers (New Hampshire Retirement System), 158 N.H. 529, 969 A.2d 403 (2009); Bunch v. Britton, 253 N.C. App. 659, 802 S.E.2d 462 (2017).

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16B Am. Jur. 2d Constitutional Law § 818

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 818. Meaning of "equal protection of the laws"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000

The phrase "equal protection of the laws" has never been precisely defined.[1] In fact, the phrase is not susceptible of exact delimitation,[2] nor can the boundaries of the protection afforded thereby be automatically or rigidly fixed.[3] In other words, no rule as to what may be regarded as a denial of the equal protection of the laws which will cover every case has ever been formulated,[4] and no test of the type of cases involving the Equal Protection Clause of the 14th Amendment can be infallible or all-inclusive.[5] Moreover, it would be impracticable and unwise to attempt to lay down any generalization covering the subject;[6] each case must be decided as it arises.[7]

The guaranty of equal protection of the laws is a pledge of the protection of equal laws,[8] and therefore "equal protection of the laws" has been held to mean the protection of equal laws.[9] Generally speaking, laws that apply evenhandedly to all unquestionably comply with the Equal Protection Clause.[10] Although the Equal Protection Clause requires that a law be evenhanded as actually applied, it does not require identical treatment under the law.[11]

Footnotes

1 Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1928).

2 Mascari v. International Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of America (AFL) Local Union No. 667, 187 Tenn. 345, 215 S.W.2d 779 (1948).

3 Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1928).

4 Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1928).

5 Bayside Fish Flour Co. v. Gentry, 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 (1936).

6 Puget Sound Power & Light Co. v. King County, 264 U.S. 22, 44 S. Ct. 261, 68 L. Ed. 541 (1924).

7 Safeway Stores, Inc. v. Oklahoma Retail Grocers Ass'n, Inc., 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959).

8 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

9 State v. Burkhart, 2015-Ohio-3409, 37 N.E.3d 220 (Ohio Ct. App. 12th Dist. Clermont County 2015).

10 Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997).

11 McQueary v. Blodgett, 924 F.2d 829 (9th Cir. 1991); State v. Miller, 84 Haw. 269, 933 P.2d 606 (1997); Zempel v. Uninsured Employers' Fund, 282 Mont. 424, 938 P.2d 658 (1997).

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16B Am. Jur. 2d Constitutional Law § 819

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 819. Objective of Equal Protection Clause regarding property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3495 to 3517

The Equal Protection Clause of the 14th Amendment intended not only that there should be no arbitrary spoliation of property, but also that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights, and that all persons should be equally entitled to acquire and enjoy property.[1] The Equal Protection Clause, however, does not protect property from every injurious or oppressive action by a state.[2]

It is not necessary to prove a deprivation of property to establish a violation of the Equal Protection Clause.[3]

Footnotes

1 Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921); Mulkey v. Reitman, 64 Cal. 2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966), judgment aff'd, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

2 Seattle Gas Co. v. City of Seattle, Wash, 291 U.S. 638, 54 S. Ct. 550, 78 L. Ed. 1037 (1934); Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).

3 Mahone v. Addicks Utility Dist. of Harris County, 836 F.2d 921 (5th Cir. 1988).

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16B Am. Jur. 2d Constitutional Law § 820

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 820. Objective of Equal Protection Clause regarding freedom from discrimination

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3250 to 3310

A primary objective of the Equal Protection Clause of the 14th Amendment was the freedom of the slave race,[1] the security[2] and firm establishment of that freedom,[3] and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over such individual.[4] In other words, the central purpose of the 14th Amendment was to eliminate racial discrimination emanating from official sources in the states.[5] Although a central purpose of the Equal Protection Clause is the prevention of official conduct discriminating on the basis of race,[6] the Equal Protection Clause is not limited to race-based denials of the protection of the laws,[7] and also protects individuals from governmental discrimination on the basis of other suspect classifications,[8] such as sex,[9] national origin,[10] religion,[11] or political affiliation.[12] The Equal Protection Clause extends its protection to all persons without regard to race, color, or class and prohibits any state legislation which has the effect of denying to any race, class, or individual the equal protection of the laws.[13]

Footnotes

1 Flowers v. Mississippi, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

2 Flowers v. Mississippi, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019); Palmer v. Thompson, 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971); Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969).

3 Flowers v. Mississippi, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

4 Flowers v. Mississippi, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

5 Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 197 L. Ed. 2d 107, 102 Fed. R. Evid. Serv. 1084 (2017).

6 Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976); McLaughlin v. State of Fla., 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964); Hayden v. Paterson, 594 F.3d 150 (2d Cir. 2010); Bowlby v. City of Aberdeen, Miss., 681 F.3d 215 (5th Cir. 2012).

The central mandate of the Equal Protection Clause is racial neutrality in governmental decision-making. Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).

7 Estate of Romain v. City of Grosse Pointe Farms, 935 F.3d 485 (6th Cir. 2019).

8 Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010); Clark v. City of Shawnee, Kansas, 228 F. Supp. 3d 1210 (D. Kan. 2017).

9 Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

10 Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

The 14th Amendment's prohibition of unreasonable discrimination among classes of persons contemplates not only discrimination affecting whites and blacks but also discrimination affecting other classes of persons, such as classes composed of persons having a common foreign ancestry. Hernandez v. State of Tex., 347 U.S. 475, 74 S. Ct. 667, 98 L. Ed. 866 (1954).

11 Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

12 Abcarian v. McDonald, 617 F.3d 931, 260 Ed. Law Rep. 528 (7th Cir. 2010).

13 Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).

As to Section 1 of the 14th Amendment being the source of many civil rights, see Am. Jur. 2d, Civil Rights § 5.

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 821. Focus of Equal Protection Clause on individuals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010

At the heart of the Federal Constitution's guarantee of equal protection lies the simple command that the government must treat citizens as individuals rather than as components of racial, religious, sexual, or national classes.[1] Thus, a law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.[2] When a state distributes benefits to individuals unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause.[3]

Footnotes

1 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).
The 14th Amendment speaks of the individual, not of the racial or other group to which that individual may belong; it prohibits a state from arbitrarily discriminating against "any person." Banks v. Housing Authority of City and County of San Francisco, 120 Cal. App. 2d 1, 260 P.2d 668 (1st Dist. 1953).

2 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

3 Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985); Zobel v. Williams, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

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16B Am. Jur. 2d Constitutional Law § 822

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 822. Congress's power to enforce Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3045, 4857

Congress's enforcement power under the 14th Amendment is broad and includes the authority both to remedy and to deter violation of rights guaranteed by the 14th Amendment by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the amendment's text.[1] While Congress must, pursuant to its enforcement power under the 14th Amendment, have a wide berth in devising appropriate remedial and preventative measures for unconstitutional actions, those measures may not work a substantive change in the governing law.[2] The most important requirement for determining whether a statute is a valid exercise of Congress's power to enforce the Equal Protection Clause is whether the statute is consistent with the negative constraints of the Constitution, specifically the Constitution's protection of individual rights.[3] Congress may not authorize a state to violate the Equal Protection Clause,[4] and the Equal Protection Clause is not a bludgeon with which Congress may compel a state to violate other provisions of the Constitution.[5]

Congress, when acting pursuant to its enforcement power under the 14th Amendment, can prohibit or take measures designed to remedy unreasonable and arbitrary classifications made by the states or the effects of such classifications and when doing so can abrogate the states' sovereign immunity to suit in federal court.[6] However, Congress's enforcement power in cases not involving suspect or quasi-suspect classes or fundamental interests is limited to the elimination of arbitrariness or the effects of arbitrary government action and does not permit Congress to prohibit or otherwise target reasonable state decisions or practices.[7] Congress' enforcement power does not permit Congress to prohibit every discrimination between groups of people, and thus,

every congressional action that enlarges the scope of a law to encompass a new class of people, thereby eliminating previous discrimination that the law had made, is not ipso facto a means toward enforcing the 14th Amendment.[8]

Footnotes

1 Tennessee v. Lane, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004).

2 Tennessee v. Lane, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004).

3 Wilson-Jones v. Caviness, 99 F.3d 203, 1996 FED App. 0343P (6th Cir. 1996), opinion amended on other grounds on denial of reh'g, 107 F.3d 358 (6th Cir. 1997).

4 Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).
Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the states to violate the Equal Protection Clause. Townsend v. Swank, 404 U.S. 282, 92 S. Ct. 502, 30 L. Ed. 2d 448 (1971); Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

5 Sloan v. Lemon, 413 U.S. 825, 93 S. Ct. 2982, 37 L. Ed. 2d 939 (1973).

6 Mills v. State of Me., 118 F.3d 37 (1st Cir. 1997).

7 Mills v. State of Me., 118 F.3d 37 (1st Cir. 1997).

8 Mills v. State of Me., 118 F.3d 37 (1st Cir. 1997).

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16B Am. Jur. 2d Constitutional Law § 823

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 823. Remedies for discrimination and denial of equal protection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3045

The proper remedy for an unconstitutional exclusion from an opportunity or advantage based on discrimination should aim to eliminate, insofar as possible, the discriminatory effects of the past and to bar like discrimination in the future.[1] When the right invoked is that of equal treatment, the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by the withdrawal of benefits from the favored class as well as by the extension of benefits to the excluded class.[2]

A legislature may confer a benefit upon the general public, thus satisfying equal protection, by creating a substitute remedy when it limits or abolishes an existing remedy.[3]

Footnotes

1 U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996).

2 Heckler v. Mathews, 465 U.S. 728, 104 S. Ct. 1387, 79 L. Ed. 2d 646 (1984).
If a law violates equal protection guarantees, the remedy is either to extend its privileges to the unprotected class or to declare the law a nullity in order that its benefits will not extend to the class that the legislature intended to benefit. Penn v. Attorney General of State of Ala., 930 F.2d 838 (11th Cir. 1991).

3 Lorette v. Peter-Sam Inv. Properties, 140 N.H. 208, 665 A.2d 341 (1995).

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16B Am. Jur. 2d Constitutional Law § 824

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 824. Relation of equal protection to guarantee of due process under 14th Amendment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3005, 3006

Although the Equal Protection Clause is associated in the 14th Amendment with the Due Process Clause and it is customary to consider them together, and although they may overlap and a violation of one may at times involve the violation of the other, the spheres of protection they offer are not coterminous.[1] Under the 14th Amendment, "due process" emphasizes fairness between the state and the individual dealing with the state, regardless of how other individuals in the same situation may be treated; "equal protection," on the other hand, emphasizes disparity in treatment by a state between classes of individuals whose situations are arguably indistinguishable.[2] The guarantee of equal protection of the laws under the 14th Amendment extends beyond the requirements of due process.[3]

Although the Due Process and Equal Protection Clauses of the 14th Amendment set forth independent principles,[4] and protect distinctly different interests,[5] they are connected in a profound way, and in some instances each may be instructive as to the meaning and reach of the other.[6] The rights of life, liberty, and property, protected by the Due Process Clause of the 14th Amendment, and the right to the equal protection of the law under the 14th Amendment, grouped together, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.[7] Equality of right is fundamental in both, and each forbids class legislation arbitrarily discriminating against some and favoring others in like circumstances.[8]

Footnotes

1 Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).
As to due process of law, generally, see §§ 933 to 1017.

2 Ross v. Moffitt, 417 U.S. 600, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974).
As to the requirement, as a matter of due process of law, that statutes be characterized by equality in their operation, see § 961.

3 Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124 (1952).

4 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

5 Clark v. City of Shawnee, Kansas, 228 F. Supp. 3d 1210 (D. Kan. 2017).

6 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

7 Department of Mental Hygiene v. Hawley, 59 Cal. 2d 247, 28 Cal. Rptr. 718, 379 P.2d 22 (1963).

8 Washington Nat. Ins. Co. v. Board of Review of N. J. Unemployment Compensation Commission, 1 N.J. 545, 64 A.2d 443 (1949).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

a. In General

§ 825. Relation of equal protection to guarantee of due process under Fifth Amendment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3005, 3006

While the Fifth Amendment to the Federal Constitution contains no Equal Protection Clause, it does forbid discrimination by the federal government that is so unjustifiable as to be violative of due process.[1] The liberty protected by the Fifth Amendment's Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws.[2] In other words, the Due Process Clause of the Fifth Amendment encompasses equal protection principles,[3] and assures every person the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.[4] The Fifth Amendment thus provides the same equal protection guarantee regarding federal legislation that the 14th Amendment provides in regard to state legislation.[5]

The validity of federal legislation under the Due Process Clause of the Fifth Amendment is tested by the same rules of equality that are employed to test the validity of state legislation under the Equal Protection Clause of the 14th Amendment.[6] In other words, Fifth Amendment equal protection claims are examined under the same principles that apply to such claims under the 14th Amendment.[7] Specifically, for purposes of determining the validity, under the equal protection component of the Due Process Clause of the Federal Constitution's Fifth Amendment, of classifications based explicitly on race, all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny—that is, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.[8] If the federal government acts in a manner that would violate the 14th Amendment's Equal Protection Clause, such

action will be deemed a violation of the implied equal protection guarantee of the Fifth Amendment's Due Process Clause.[9] Accordingly, if a classification would be invalid under the Equal Protection Clause, it is also inconsistent with the due process requirement of the Fifth Amendment;[10] conversely, if a classification is reasonable, rational, and not arbitrary so that it would be valid under the Equal Protection Clause, it is also consistent with the Fifth Amendment's due process provision.[11]

The protections provided by the Fifth and 14th Amendments are not always coextensive, since not only does the language of the Amendments differ, but more importantly, there may be overriding national interests which justify selective federal legislation that would be unacceptable for an individual state.[12] Since the Due Process Clause appears in both the Fifth and the 14th Amendments whereas the Equal Protection Clause does not, the primary office of the latter differs from and is an additive to the protection guaranteed by the former.[13]

Footnotes

1 Rostker v. Goldberg, 453 U.S. 57, 101 S. Ct. 2646, 69 L. Ed. 2d 478 (1981); Weinberger v. Wiesenfeld, 420 U.S. 636, 95 S. Ct. 1225, 43 L. Ed. 2d 514 (1975); Schlesinger v. Ballard, 419 U.S. 498, 95 S. Ct. 572, 42 L. Ed. 2d 610 (1975); Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); U. S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973).

2 U.S. v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

3 Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976).
The Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups. Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976).

4 Buchanan v. City of Bolivar, Tenn., 99 F.3d 1352, 114 Ed. Law Rep. 25, 1996 FED App. 0352P (6th Cir. 1996); Philips v. Perry, 106 F.3d 1420 (9th Cir. 1997), as amended without opinion, (Apr. 18, 1997).

5 U.S. v. Cunningham, 866 F. Supp. 2d 1050 (S.D. Iowa 2012).
The equal protection obligations imposed by the Fifth and the 14th Amendments are indistinguishable. Stop Reckless Economic Instability Caused by Democrats v. Federal Election Com'n, 814 F.3d 221 (4th Cir. 2016).

6 Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980); Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 97 S. Ct. 911, 51 L. Ed. 2d 173 (1977); Hampton v. Mow Sun Wong, 426 U.S. 88, 96 S. Ct. 1895, 48 L. Ed. 2d 495 (1976); Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
As to the necessity, under the Fifth Amendment, that federal laws operate equally, generally, see § 961.

7 Nicholas v. Tucker, 114 F.3d 17 (2d Cir. 1997); Mack v. Warden Loretto FCI, 839 F.3d 286 (3d Cir. 2016); Center for Bio-Ethical Reform, Inc. v. Napolitano, 648 F.3d 365 (6th Cir. 2011); Roe v. Shanahan, 359 F. Supp. 3d 382 (E.D. Va. 2019), aff'd, 947 F.3d 207 (4th Cir. 2020), as amended without opinion, (Jan. 14, 2020).

8 Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).
As the strict scrutiny test, generally, see § 854.

9 Cherri v. Mueller, 951 F. Supp. 2d 918 (E.D. Mich. 2013).

10 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

11 U. S. v. Antelope, 430 U.S. 641, 97 S. Ct. 1395, 51 L. Ed. 2d 701 (1977); Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 97 S. Ct. 911, 51 L. Ed. 2d 173 (1977); Knebel v. Hein, 429 U.S. 288, 97 S. Ct. 549, 50 L. Ed. 2d 485 (1977).

12 Hampton v. Mow Sun Wong, 426 U.S. 88, 96 S. Ct. 1895, 48 L. Ed. 2d 495 (1976).

13 Hampton v. Mow Sun Wong, 426 U.S. 88, 96 S. Ct. 1895, 48 L. Ed. 2d 495 (1976).

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16B Am. Jur. 2d Constitutional Law § 826

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 826. Nature of guarantee of equal protection of the law, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3030 to 3047

The constitutional guarantee of equal protection of the laws requires that all persons must be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.[1] Such guarantee creates no substantive rights, but rather embodies the general rule that states must treat like cases alike but may treat unlike cases accordingly.[2]

Equal protection of the laws is something more than an abstract right; it is a command which the states must respect, the benefits of which every person may demand.[3] Similarly, the laws to which the 14th Amendment's guarantee of equal protection has reference do not relate to abstract units but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies.[4] Local tradition cannot justify a failure to comply with the constitutional mandate requiring equal protection of the law,[5] and one must also be ever aware that the Federal Constitution forbids sophisticated as well as simpleminded modes of discrimination.[6]

Footnotes

1 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997); Herring v. State, 100 So. 3d 616 (Ala. Crim. App. 2011); Doe v. State, 421 S.C. 490, 808 S.E.2d 807 (2017).

2 Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997); Ingram v. Cooper, 163 F. Supp. 3d 1133, 334 Ed. Law Rep. 150 (N.D. Okla. 2016).

3 Hill v. State of Tex., 316 U.S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559 (1942).
The constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of the status quo. Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

4 Safeway Stores, Inc. v. Oklahoma Retail Grocers Ass'n, Inc., 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959).

5 Eubanks v. State of La., 356 U.S. 584, 78 S. Ct. 970, 2 L. Ed. 2d 991 (1958).

6 Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 827. Requirement of similar treatment for those similarly situated under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3041

The Equal Protection Clause of the 14th Amendment requires public bodies and institutions to treat similarly situated individuals in a similar manner.[1] The Equal Protection Clause thus bars a governing body from applying a law dissimilarly to people who are similarly situated.[2] The treatment of dissimilarly situated persons in a dissimilar manner by the government, however, does not violate the Equal Protection Clause.[3]

Equal protection in its guarantee of like treatment to all similarly situated permits classification which is reasonable, and not arbitrary, and which is based upon material and substantial differences having a reasonable relation to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved, inasmuch as the Equal Protection Clause does not forbid discrimination with respect to things that are different.[4] The Equal Protection Clause thus does not mean that a state may not draw lines that treat one class of individuals or entities differently from others.[5]

Footnotes

1 Cornerstone Christian Schools v. University Interscholastic League, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); Buchanan v. City of Bolivar, Tenn., 99 F.3d 1352, 114 Ed. Law Rep. 25, 1996 FED App. 0352P (6th Cir. 1996); In re N.H., 2016 IL App (1st) 152504, 402 Ill. Dec. 475, 52 N.E.3d 396 (App. Ct. 1st Dist. 2016); State v. Ossege, 2014-Ohio-3186, 17 N.E.3d 30 (Ohio Ct. App. 12th Dist. Clermont County 2014); State v. Blilie, 132 Wash. 2d 484, 939 P.2d 691 (1997); Penterman v. Wisconsin Elec. Power Co., 211 Wis. 2d 458, 565 N.W.2d 521 (1997).

2 Bratton v. City of Florence, 688 So. 2d 233 (Ala. 1996).

3 Keevan v. Smith, 100 F.3d 644 (8th Cir. 1996); Kingman Park Civic Ass'n v. Gray, 956 F. Supp. 2d 230 (D.D.C. 2013); Kerrigan v. Commissioner of Public Health, 289 Conn. 135, 957 A.2d 407 (2008); In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

4 Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966).

As to classification, generally, see §§ 845 to 860.

As to the requirement of reasonableness, see §§ 861, 862.

As to material and substantial differences in classes, see §§ 863, 864.

5 Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973).

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16B Am. Jur. 2d Constitutional Law § 828

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 828. Prohibition by Equal Protection Clause of intentional or purposeful discrimination

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3040

The purpose of the Equal Protection Clause of the 14th Amendment is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through duly constituted agents.[1] Accordingly, the Equal Protection Clause is violated only by intentional[2] or purposeful discrimination.[3] Purposeful discrimination, in this regard, requires more than intent as volition or intent as awareness of consequences, and instead involves a decision-maker undertaking a course of action because of, not merely in spite of, the action's adverse effects upon an identifiable group.[4] Intentional discrimination, as would support an equal protection claim, means that a defendant acted at least in part because of a plaintiff's protected status.[5]

Mere governmental negligence is insufficient to sustain an equal protection claim,[6] since such a claim requires the presence of an unlawful intent to discriminate against a plaintiff for an invalid reason.[7] Furthermore, accommodating one interest group is not equivalent to intentionally harming another, as may demonstrate an equal protection violation.[8]

Footnotes

1 Village of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000); Sadie v. City of Cleveland, 718 F.3d 596 (6th Cir. 2013); A.N. by and through Ponder v. Syling, 928 F.3d 1191 (10th Cir. 2019); Crawford v. Kansas Dept. of Revenue, 46 Kan. App. 2d 464, 263 P.3d 828 (2011); Edward Valves, Inc. v. Wake County, 343 N.C. 426, 471 S.E.2d 342 (1996).

2 Ricketts v. City of Hartford, 74 F.3d 1397, 43 Fed. R. Evid. Serv. 903 (2d Cir. 1996), as amended without opinion on reh'g in part, (Feb. 14, 1996); Vera v. Tue, 73 F.3d 604 (5th Cir. 1996); Hispanic Taco Vendors of Washington v. City of Pasco, 994 F.2d 676 (9th Cir. 1993); Rhodes v. Snyder, 302 F. Supp. 3d 905 (E.D. Mich. 2018); Ferguson v. Georgia Dept. of Corrections, 428 F. Supp. 2d 1339 (M.D. Ga. 2006); Opinion of the Justices, 171 N.H. 128, 191 A.3d 1245 (2018).

3 Giano v. Senkowski, 54 F.3d 1050 (2d Cir. 1995); Ferguson v. Georgia Dept. of Corrections, 428 F. Supp. 2d 1339 (M.D. Ga. 2006); In re Contest of General Election Held on November 4, 2008, for Purpose of Electing a U.S. Senator from State of Minnesota, 767 N.W.2d 453 (Minn. 2009).

4 Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 73 Fed. R. Serv. 3d 837 (2009); Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); McCleskey v. Kemp, 481 U.S. 279, 107 S. Ct. 1756, 95 L. Ed. 2d 262 (1987); Johnson v. Rodriguez, 110 F.3d 299 (5th Cir. 1997); Nabozny v. Podlesny, 92 F.3d 446, 111 Ed. Law Rep. 740 (7th Cir. 1996); Jackson ex rel. Jackson v. Suffolk County, 87 F. Supp. 3d 386 (E.D. N.Y. 2015); Burrell v. Shepard, 321 F. Supp. 3d 1 (D.D.C. 2018).

5 Chinatown Neighborhood Association v. Harris, 33 F. Supp. 3d 1085 (N.D. Cal. 2014), aff'd, 794 F.3d 1136 (9th Cir. 2015); Collins v. Thurmond, 41 Cal. App. 5th 879, 2019 WL 5779893 (5th Dist. 2019), review denied, (Feb. 26, 2020).

6 Rickett v. Jones, 901 F.2d 1058 (11th Cir. 1990).

7 Giano v. Senkowski, 54 F.3d 1050 (2d Cir. 1995); Batra v. Board of Regents of University of Nebraska, 79 F.3d 717, 108 Ed. Law Rep. 48 (8th Cir. 1996).

8 Gallinger v. Becerra, 898 F.3d 1012 (9th Cir. 2018).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 829. Prohibition by Equal Protection Clause against invidious discrimination

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3039

The Equal Protection Clause of the 14th Amendment was intended to abolish all caste-based and invidious class-based legislation,[1] and grants individuals the right to be free from invidious discrimination in statutory classifications and other governmental activity.[2] The Equal Protection Clause does not require that a state never distinguish between citizens[3] or draw lines that treat one class of individuals differently from others,[4] but only that the distinctions that are made should not be arbitrary or invidious.[5] It is only invidious discrimination that offends the Equal Protection Clause.[6] Thus, the test under the Equal Protection Clause is not whether a statute or rule discriminates,[7] but whether the difference in treatment is an invidious discrimination.[8]

For purposes of equal protection, invidious discrimination does not become less so because the discrimination accomplished is of a lesser magnitude than that intended, since discriminatory intent is not amenable to calibration.[9] Still, absent a record of evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions.[10] Determining whether an invidious discriminatory purpose was a motivating factor in adopting a statute or ordinance, as required to establish that the statute or ordinance violates the Equal Protection Clause, demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.[11]

Footnotes

1 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); American Civil Liberties Union of Kansas and Western Missouri v. Praeger, 863 F. Supp. 2d 1125 (D. Kan. 2012).

2 D.S. v. East Porter County School Corp., 799 F.3d 793, 321 Ed. Law Rep. 756 (7th Cir. 2015); Watson v. Richmond University Medical Center, 408 F. Supp. 3d 249 (E.D. N.Y. 2019).

3 Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); State v. Miller, 84 Haw. 269, 933 P.2d 606 (1997).

4 Edwards v. State, 139 So. 3d 827 (Ala. Crim. App. 2013).

5 Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); State v. Miller, 84 Haw. 269, 933 P.2d 606 (1997).

6 City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976); Schilb v. Kuebel, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971); Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010); United States v. Green, 222 F. Supp. 3d 267 (W.D. N.Y. 2016); Fletcher Properties, Inc. v. City of Minneapolis, 931 N.W.2d 410 (Minn. Ct. App. 2019).

7 American Party of Texas v. White, 415 U.S. 767, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968).

8 American Party of Texas v. White, 415 U.S. 767, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968); Edwards v. State, 139 So. 3d 827 (Ala. Crim. App. 2013).

9 Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979).

10 Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

11 Young Apartments, Inc. v. Town of Jupiter, FL, 529 F.3d 1027 (11th Cir. 2008); Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, 138 F. Supp. 3d 352 (S.D. N.Y. 2015), aff'd, 945 F.3d 83, 372 Ed. Law Rep. 567 (2d Cir. 2019); Bellinger v. Bowser, 288 F. Supp. 3d 71 (D.D.C. 2017).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 830. Equality of operation of laws under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3033 to 3035

The Equal Protection Clause of the 14th Amendment provides for equal application of the laws,[1] but does not make every minor difference in the application of laws to different groups a violation of it.[2] Laws need not affect every man, woman, and child exactly alike in order to avoid the prohibition against inequality.[3] The equality of operation of statutes, as prescribed by the Equal Protection Clause, does not mean indiscriminate operation on persons merely as such, but on persons according to their circumstances.[4] The equal treatment of all claimants in all circumstances is not required, as the Equal Protection Clause merely requires equal application of the law in similar circumstances.[5]

Footnotes

1 State v. Min Sik Kim, 7 Wash. App. 2d 839, 436 P.3d 425 (Div. 2 2019), review denied, 193 Wash. 2d 1037, 447 P.3d 544 (2019).

2 Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973).

3 Sammarco v. Boysa, 193 Wis. 642, 215 N.W. 446, 55 A.L.R. 370 (1927).

4 Stebbins v. Riley, 268 U.S. 137, 45 S. Ct. 424, 69 L. Ed. 884, 44 A.L.R. 1454 (1925).

5 City of Baton Rouge/Parish of East Baton Rouge v. Myers, 145 So. 3d 320 (La. 2014).

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16B Am. Jur. 2d Constitutional Law § 831

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

b. Nature and Purpose of Guarantee

§ 831. Proof of discriminatory intent for purposes of Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3463

To establish a prima facie case of discrimination under the Equal Protection Clause of the 14th Amendment, the plaintiff must demonstrate, inter alia, that the plaintiff is otherwise similarly situated to members of an unprotected class, that the plaintiff was treated differently from members of the unprotected class, and that the defendant acted with discriminatory intent.[1] Factors probative of whether a decision-making body was motivated by discriminatory intent include evidence of a consistent pattern of actions by a decision-making body disparately impacting members of a particular class of persons; the historical background of the decision, which may take into account any history of discrimination by the decision-making body or jurisdiction it represents; the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and contemporary statements by decision makers on the record or in minutes of their meetings.[2] Discriminatory intent may be found even where the record contains no direct evidence of bad faith, ill will, or any evil motive on the part of public officials.[3]

Footnotes

1 Johnson v. City of Fort Wayne, Ind., 91 F.3d 922 (7th Cir. 1996); Association of Residential Resources in Minnesota, Inc. v. Gomez, 51 F.3d 137 (8th Cir. 1995); Cross v. State of Ala., State Dept. of Mental Health & Mental Retardation, 49 F.3d 1490 (11th Cir. 1995); Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996).

2 Southside Fair Housing Committee v. City of New York, 928 F.2d 1336 (2d Cir. 1991); Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995).

3 Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 84 Ed. Law Rep. 122 (11th Cir. 1993).

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16B Am. Jur. 2d Constitutional Law § 832

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 832. Application of Equal Protection Clause to states and territories

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3020, 3021, 3025, 3026

The Equal Protection Clause of the 14th Amendment is a restriction on the state governments and operates exclusively upon them.[1] The Equal Protection Clause, in other words, applies only to states[2] and reaches only state actors.[3] Equal protection challenges thus require state action[4] and must be brought against state actors.[5]

The Equal Protection Clause of the 14th Amendment applies to Puerto Rico,[6] but not to the Virgin Islands.[7] The Equal Protection Clause of the 14th Amendment also does not apply to the District of Columbia,[8] but the Fifth Amendment to the Federal Constitution imposes the same equal protection requirements on the District of Columbia as the 14th Amendment imposes on the states.[9]

Observation:

No state may effectively abdicate its responsibilities under the Equal Protection Clause by either ignoring them or by merely failing to discharge them, whatever the motive may be.[10] Accordingly, the guarantee of equal protection is not limited simply to measures instituted by the government, inasmuch as it also prevents the electorate as a whole, whether by referendum or otherwise, from

instituting actions violative of the Equal Protection Clause.[11] The existence of state action within the purview of the Equal Protection Clause can be determined only in the framework of the peculiar facts or circumstances of a case.[12]

Footnotes

1 Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948); Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

2 Jones v. District of Columbia, 879 F. Supp. 2d 69 (D.D.C. 2012).

3 Fitzgerald v. Barnstable School Committee, 555 U.S. 246, 129 S. Ct. 788, 172 L. Ed. 2d 582 (2009); Yul Chu v. Mississippi State University, 901 F. Supp. 2d 761, 291 Ed. Law Rep. 676 (N.D. Miss. 2012), aff'd, 592 Fed. Appx. 260, 314 Ed. Law Rep. 97 (5th Cir. 2014).
Only a state actor can violate the Equal Protection Clause. Stout by Stout v. Jefferson County Board of Education, 882 F.3d 988, 351 Ed. Law Rep. 739 (11th Cir. 2018); Edwards v. U.S., Dept. of Energy, 371 F. Supp. 2d 859 (W.D. Ky. 2005), judgment aff'd, 200 Fed. Appx. 382, 2006 FED App. 0577N (6th Cir. 2006).

4 Willis v. Town of Marshall, 293 F. Supp. 2d 608 (W.D. N.C. 2003); Garden State Equality v. Dow, 434 N.J. Super. 163, 82 A.3d 336 (Law Div. 2013); Johnson v. State Farm Mutual Automobile Insurance Company, 520 S.W.3d 92 (Tex. App. Austin 2017), petition for review filed and petition for review filed; Crawford v. West Virginia Department of Corrections-Work Release, 239 W. Va. 374, 801 S.E.2d 252 (2017).

5 Johnson v. State Farm Mutual Automobile Insurance Company, 520 S.W.3d 92 (Tex. App. Austin 2017), petition for review filed and petition for review filed.
The 14th Amendment, which bars states from denying persons equal protection of the law, does not apply in an action in which there are no state defendants. Torres-Morales v. U.S., 537 F. Supp. 2d 291 (D.P.R. 2007).

6 Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gomez, 174 F. Supp. 3d 585 (D.P.R. 2016), aff'd, 834 F.3d 110 (1st Cir. 2016).

7 Government of Virgin Islands v. Dowling, 866 F.2d 610 (3d Cir. 1989).

8 J.C. v. District of Columbia, 199 A.3d 192 (D.C. 2018).

9 Wells v. Hense, 235 F. Supp. 3d 1, 345 Ed. Law Rep. 203 (D.D.C. 2017).

10 Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961).

11 City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).

12 Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 833. Application of Equal Protection Clause to state agencies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3020, 3021

The Equal Protection Clause of the 14th Amendment is aimed at all official state actions, not just those of the state legislatures.[1] The inhibitions of the 14th Amendment include all the departments of state government, including the political and executive departments,[2] and extend to all actions of a state denying equal protection of the laws, whatever the agency of the state taking the action or whatever the guise in which it is taken.[3] In short, all governmental agencies authorized by the state are within the purview of the clause.[4]

Observation:

A state license does not constitute the licensee an administrative agent of the state for purposes of the Equal Protection Clause.[5]

Footnotes

1 Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979).

2 Lombard v. State of La., 373 U.S. 267, 83 S. Ct. 1122, 10 L. Ed. 2d 338 (1963); Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944) (state executive agency); Banks v. Housing Authority of City and County of San Francisco, 120 Cal. App. 2d 1, 260 P.2d 668 (1st Dist. 1953); State on Inf. of Dalton v. Metropolitan St. Louis Sewer Dist., 365 Mo. 1, 275 S.W.2d 225 (1955).

3 Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 5, 3 L. Ed. 2d 19, 79 Ohio L. Abs. 452, 79 Ohio L. Abs. 462 (1958).
An action by state administrative and regulatory agencies is state action. Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Robinson v. State of Fla., 378 U.S. 153, 84 S. Ct. 1693, 12 L. Ed. 2d 771 (1964); Abrams v. Bronstein, 33 N.Y.2d 488, 354 N.Y.S.2d 926, 310 N.E.2d 528 (1974) (administrative departments of local governmental units).

4 George v. City of Portland, 114 Or. 418, 235 P. 681, 39 A.L.R. 341 (1925).
A board established by an act of the state legislature is an agency of the state whose action is, for purposes of the Equal Protection Clause, state action. Com. of Pa. v. Board of Directors of City Trusts of City of Philadelphia, 353 U.S. 230, 77 S. Ct. 806, 1 L. Ed. 2d 792 (1957).
The fact that a government board can only make recommendations and cannot enact any laws on its own does not immunize from equal protection scrutiny the validity of a state law requiring that parties appointed to the board be freeholders. Quinn v. Millsap, 491 U.S. 95, 109 S. Ct. 2324, 105 L. Ed. 2d 74 (1989).

5 Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d 697, 1 A.L.R.2d 1160 (1947).

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16B Am. Jur. 2d Constitutional Law § 834

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 834. Application of Equal Protection Clause to state officials

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3020, 3021

Every state official, high and low, is bound by the Equal Protection Clause of the 14th Amendment.[1] A case where one in possession of state power uses that power to accomplish the doing of wrongs which are forbidden by the 14th Amendment is within the purview of that amendment, even though the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer.[2] Hence, the rights protected by the Equal Protection Clause may be improperly invaded by the acts of a state officer acting under color of state authority, even though that officer not only exceeded the officer's authority but also disregarded special commands of the state law.[3] Whoever, by virtue of a public position under a state government, deprives another of any right protected by the 14th Amendment against deprivation by the state, violates the constitutional inhibition, and since this person acts in the name of the state and for the state and is clothed with the state's powers, that individual's act is that of the state.[4]

Footnotes

1 U.S. v. Raines, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960).

2 Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278, 33 S. Ct. 312, 57 L. Ed. 510 (1913).

3 Iowa-Des Moines Nat. Bank v. Bennett, 284 U.S. 239, 52 S. Ct. 133, 76 L. Ed. 265 (1931).

Even actions of the state's agents that may be illegal under state law are attributable to the state. Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979).

4 Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 835. Application of Equal Protection Clause to counties and municipal corporations; school boards

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3022, 3023

Counties, municipal corporations, and other political subdivisions of a state are as bound by the Equal Protection Clause of the 14th Amendment as are the states themselves.[1] Accordingly a city, as a governmental entity, can be treated differently for equal protection purposes from a private commercial entity.[2]

The Equal Protection Clause is fully applicable to public school districts and their employees.[3]

Footnotes

1 Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).
Municipal ordinances adopted under state authority constitute state action and are within the prohibition of the 14th Amendment. Lovell v. City of Griffin, Ga., 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938).
For purposes of Equal Protection Clause analysis, municipalities are considered to be state actors. Myslewski v. City of Reho both Beach, 987 F. Supp. 2d 499 (D. Del. 2013).

2 Allright Colorado, Inc. v. City and County of Denver, 937 F.2d 1502 (10th Cir. 1991).

3 A.H. by Handling v. Minersville Area School District, 290 F. Supp. 3d 321, 353 Ed. Law Rep. 244 (M.D. Pa. 2017).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 836. Application of Equal Protection Clause to judicial branch of government

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3021

The judicial branches of the state governments are bound by the Equal Protection Clause of the 14th Amendment inasmuch as a constitutional mandate to maintain equality before the law and equal laws rests upon the judicial departments with as much force as upon the states' other departments.[1] The action of state courts and of judicial officers in their official capacities, even though taken for the enforcement of private agreements, is state action within the meaning of the Equal Protection Clause.[2] The Equal Protection Clause, however, does not in any sense compel uniform decisions by state courts,[3] and a mere error by a state judge is not a violation of the Equal Protection Clause.[4]

Footnotes

1 Barrows v. Jackson, 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953); Beazley v. Davis, 92 Nev. 81, 545 P.2d 206 (1976).

2 Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).

3 Davis v. Behagen, 321 F. Supp. 1216 (S.D. N.Y. 1970), order aff'd, 436 F.2d 596 (2d Cir. 1970).

4 U. S. ex rel. Siegal v. Follette, 290 F. Supp. 632 (S.D. N.Y. 1968).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 837. Application of Equal Protection Clause to United States and federal agencies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3024

The Equal Protection Clause of the 14th Amendment does not extend to authority exercised by the government of the United States.[1] Federal legislation, however, is tested under the Due Process Clause of the Fifth Amendment by the same rules of equality that are employed to test the validity of state legislation under the 14th Amendment's Equal Protection Clause.[2] Accordingly, although the federal government is not subject to the 14th Amendment's Equal Protection Clause, it still must comply with the requirements of that clause[3] through the Due Process Clause of the Fifth Amendment.[4] An action that violates the 14th Amendment guarantee of equal protection when committed by a state actor violates the due process guarantee of the Fifth Amendment when committed by a federal actor.[5]

Footnotes

1 District of Columbia v. Carter, 409 U.S. 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973); Detroit Bank v. U.S., 317 U.S. 329, 63 S. Ct. 297, 87 L. Ed. 304 (1943).

2 § 825.

3 Tomaszczuk v. Whitaker, 909 F.3d 159 (6th Cir. 2018).

4 New Doe Child #1 v. United States, 901 F.3d 1015 (8th Cir. 2018), cert. denied, 139 S. Ct. 2699, 204 L. Ed. 2d 1092 (2019).

The Fifth Amendment's Due Process Clause makes the 14th Amendment's guarantee of equal protection applicable to federal entities, not just state entities mentioned explicitly in the 14th Amendment's text. Kim v. Brownlee, 344 F. Supp. 2d 758 (D.D.C. 2004).

5 Edwards v. U.S., Dept. of Energy, 371 F. Supp. 2d 859 (W.D. Ky. 2005), judgment aff'd, 200 Fed. Appx. 382, 2006 FED App. 0577N (6th Cir. 2006).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 838. Application of Equal Protection Clause to private persons or entities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3027

Private conduct, however discriminatory or wrongful, is not subject to the prohibitions of the Equal Protection Clause of the 14th Amendment.[1] Accordingly, private actions, no matter how egregious, cannot violate the equal protection guarantee of the United States Constitution.[2]

Footnotes

1 District of Columbia v. Carter, 409 U.S. 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016); Mahoney v. Babbitt, 105 F.3d 1452 (D.C. Cir. 1997).

2 Medical Institute of Minnesota v. National Ass'n of Trade and Technical Schools, 817 F.2d 1310, 39 Ed. Law Rep. 62 (8th Cir. 1987); First Nat. Bank of Kansas City v. Danforth, 523 S.W.2d 808 (Mo. 1975).
There is no equal protection recourse for private conduct abridging individual rights. Upshaw v. Progressive Insurance Co., 292 F. Supp. 3d 205 (D.D.C. 2017).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

c. Who Is Bound

§ 839. Application of Equal Protection Clause to private acts as governmental acts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3027

A.L.R. Library

Action of private institution of higher education as constituting state action, or action under color of law, for purposes of Fourteenth Amendment and 42 U.S.C.A. sec. 1983, 37 A.L.R. Fed. 601

Private conduct abridging individual rights does no violence to the Equal Protection Clause of the 14th Amendment unless the state in any of its manifestations or actions has been found to have become entwined or involved in such conduct to a significant extent[1] to amount to "state action."[2] In other words, the Equal Protection Clause does not apply to private parties unless those parties are engaged in an activity deemed to be state action.[3] The question of whether particular discriminatory conduct is private, on the one hand, or amounts to state action, on the other hand, frequently admits of no easy answer.[4] Moreover, no precise or infallible formula for such a determination exists,[5] and only by sifting the facts and weighing the circumstances in each case can the state's nonobvious involvement in private conduct be determined.[6] No one fact can function as a necessary condition across the board for finding state action, nor is any set of circumstances absolutely sufficient, for there may be some countervailing

reason against attributing activity to the government.[7] The crucial factor, however, is the interplay of the governmental and private actions.[8] For there to be state action, the claimed constitutional deprivation must result from the exercise of a right or privilege having its source in state authority and the private party charged with the deprivation must be described in all fairness as a state actor.[9]

Private action may be considered to be state action for purposes of an equal protection claim where:

- there is a symbiotic relationship between the private actor and the state,[10] or in other words, the state so far insulates itself into a position of interdependence that it becomes a joint participant in the challenged activity[11]
- there is such a close nexus between the state and the challenged action that seemingly private behavior may be fairly treated as that of the state itself[12]
- the private discriminatory conduct is aggravated in some unique way by the involvement of governmental authority[13]
- the state has commanded or encouraged the private discriminatory action,[14] or governmental policies or regulations encourage private discrimination or enable such discrimination to exist[15]
- the private actor is a willful participant in joint action with the state[16]
- the state delegated to the private actor a function traditionally exclusively reserved to the state,[17] or in other words, the private actor carries on a traditional state function[18] or has exercised powers that are traditionally the exclusive prerogative of the state[19]

State enforcement of private policies of discrimination constitutes state action to which the Equal Protection Clause is applicable.[20] Nominally private conduct which, through subterfuge, is actually governmental also is conduct that is subject to the Equal Protection Clause.[21]

Action taken by private entities with the mere approval or acquiescence of the state is not state action for purposes of the Equal Protection Clause.[22] The mere fact that a private entity performs a function serving the public also does not make it state action.[23] Furthermore, the mere fact that a private entity is subject to state regulation[24] or is licensed by the state does not make the Equal Protection Clause applicable.[25] The mere receipt of some sort of governmental benefit or service by a private entity also does not necessarily subject it to the Equal Protection Clause.[26]

Observation:

The character of a legal entity as "public" or "private" for purposes of the 14th Amendment is determined neither by its expressly private characterization in statutory law nor by a failure of the law to acknowledge the entity's inseparability from recognized government officials or agencies.[27]

Footnotes

1 Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Central Hardware Co. v. N.L.R.B., 407 U.S. 539, 92 S. Ct. 2238, 33 L. Ed. 2d 122 (1972); Gazelka v. St. Peter's Hospital, 2018 MT 152, 392 Mont. 1, 420 P.3d 528 (2018).

2 Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

3 Cook v. Talladega College, 908 F. Supp. 2d 1214, 292 Ed. Law Rep. 901 (N.D. Ala. 2012).

4 Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).

5 Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961).

6 Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967); Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).

7 Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807, 151 Ed. Law Rep. 18 (2001).

8 Anderson v. Martin, 375 U.S. 399, 84 S. Ct. 454, 11 L. Ed. 2d 430 (1964); Harvey & Corky Corp. v. Erie County, 56 A.D.2d 136, 392 N.Y.S.2d 116 (4th Dep't 1977).

9 Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991).

10 Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

11 Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016); Gazelka v. St. Peter's Hospital, 2018 MT 152, 392 Mont. 1, 420 P.3d 528 (2018).

12 Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807, 151 Ed. Law Rep. 18 (2001); American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, 134 Ed. Law Rep. 461 (1999); Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016); Peltier v. Charter Day School, Inc., 384 F. Supp. 3d 579, 367 Ed. Law Rep. 941 (E.D. N.C. 2019).

13 Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

14 Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

15 Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967); Robinson v. State of Fla., 378 U.S. 153, 84 S. Ct. 1693, 12 L. Ed. 2d 771 (1964); Anderson v. Martin, 375 U.S. 399, 84 S. Ct. 454, 11 L. Ed. 2d 430 (1964).

With regard to the Equal Protection Clause, a city wields state power in amending its charter so as to suspend the operation of an existing ordinance forbidding housing discrimination. Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969).

16 Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016).

17 Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016).

18 Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

19 Peltier v. Charter Day School, Inc., 384 F. Supp. 3d 579, 367 Ed. Law Rep. 941 (E.D. N.C. 2019).

20 Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Griffin v. State of Md., 378 U.S. 130, 84 S. Ct. 1770, 12 L. Ed. 2d 754 (1964).

Even though a testator, in leaving a fund in trust for the erection and operation of a school (Girard College) limited admission to qualified persons of the white race, it is discrimination, forbidden by the 14th Amendment, for the board operating the school to refuse to admit black persons meeting all other qualifications, where the will named as trustee the city and the board operating the school was established

by an act of the state legislature. Com. of Pa. v. Board of Directors of City Trusts of City of Philadelphia, 353 U.S. 230, 77 S. Ct. 806, 1 L. Ed. 2d 792 (1957).

21 Palmer v. Thompson, 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971).

22 American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, 134 Ed. Law Rep. 461 (1999); Wasatch Equality v. Alta Ski Lifts Co., 820 F.3d 381 (10th Cir. 2016).

23 Peltier v. Charter Day School, Inc., 384 F. Supp. 3d 579, 367 Ed. Law Rep. 941 (E.D. N.C. 2019).

24 American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, 134 Ed. Law Rep. 461 (1999); Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972).

Privately owned enterprises providing services that a state would not necessarily provide, even though they are extensively regulated, do not fall within state action for purposes of the 14th Amendment. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, 134 Ed. Law Rep. 461 (1999).

25 Johnson v. State Farm Mutual Automobile Insurance Company, 520 S.W.3d 92 (Tex. App. Austin 2017), petition for review filed and petition for review filed.

26 Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972).

The activities of the United States Olympic Committee in enforcing its rights, conferred by Congress, in protecting use of the word "Olympic" do not result in such actions being governmental in nature. San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee, 483 U.S. 522, 107 S. Ct. 2971, 97 L. Ed. 2d 427 (1987).

A hospital's receipt of federal funds by virtue of its participation in an organ-sharing network did not make the hospital a federal actor. Wheat v. Mass, 994 F.2d 273 (5th Cir. 1993).

27 Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807, 151 Ed. Law Rep. 18 (2001).

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16B Am. Jur. 2d Constitutional Law § 840

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

d. Who Is Protected

§ 840. Persons entitled to protection under the Equal Protection Clause, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010 to 3015

The Equal Protection Clause of the 14th Amendment, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws,[1] forbids the legislature to select any person, natural or artificial, upon whom it imposes discriminations not cast upon others similarly situated.[2] Equal protection relates to equality between persons,[3] and the Equal Protection Clause applies to all persons in the United States,[4] the least deserving as well as the most virtuous.[5] Equal protection of the laws under the 14th Amendment thus is provided to citizens,[6] noncitizens,[7] and all persons within the United States' territorial jurisdiction.[8] The use of the phrase "within its jurisdiction" in the Equal Protection Clause does not detract from, but rather confirms, an understanding that the protection of the 14th Amendment extends to anyone, citizen or stranger, who is subject to the laws of the state and reaches into every corner of a state's territory.[9]

Caution:

The Equal Protection Clause protects people, not places,[10] so that a statute which discriminates between political subdivisions of the state is not unconstitutional as long as it treats similarly all persons who are similarly situated within the affected political

subdivisions.[11] In other words, so long as all persons within the jurisdictional reach of a statute are equally affected by the law, it matters not that those outside the territorial reach of the law are free to behave differently.[12]

Footnotes

1 U.S. Const. Amend. XIV, § 1.

2 Atchison, T. & S.F.R. Co. v. Matthews, 174 U.S. 96, 19 S. Ct. 609, 43 L. Ed. 909 (1899).

3 State v. Press, 278 N.J. Super. 589, 651 A.2d 1068, 96 Ed. Law Rep. 994 (App. Div. 1995).

4 Ramos v. Nielsen, 321 F. Supp. 3d 1083 (N.D. Cal. 2018).

5 Hill v. State of Tex., 316 U.S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559 (1942).

6 Portland Pipe Line Corporation v. City of South Portland, 288 F. Supp. 3d 321 (D. Me. 2017).

7 Portland Pipe Line Corporation v. City of South Portland, 288 F. Supp. 3d 321 (D. Me. 2017).

8 L.M. v. Johnson, 150 F. Supp. 3d 202 (E.D. N.Y. 2015).

9 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

10 Reeder v. Kansas City Bd. of Police Com'rs, 796 F.2d 1050 (8th Cir. 1986); Nebraska Beef Producers Committee v. Nebraska Brand Committee, 287 F. Supp. 3d 740 (D. Neb. 2018).
Federal equal protection guarantee relates to equality between persons as such rather than between areas, and territorial uniformity is not a constitutional prerequisite. Texas Dept. of Transp. v. City of Sunset Valley, 146 S.W.3d 637 (Tex. 2004).

11 Reeder v. Kansas City Bd. of Police Com'rs, 796 F.2d 1050 (8th Cir. 1986).

12 Nebraska Beef Producers Committee v. Nebraska Brand Committee, 287 F. Supp. 3d 740 (D. Neb. 2018).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

d. Who Is Protected

§ 841. Specific individuals or classes entitled to protection under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3010, 3013 to 3015

The Equal Protection Clause of the 14th Amendment applies to all persons and classes of persons within the territorial jurisdiction of each state, without regard to race, creed, color, sex, religion, or nationality.[1] The following persons or groups of persons, inter alia, are protected by the Equal Protection Clause:

- women[2]
- children[3] including, in many situations, illegitimate children,[4] but not unborn children[5] or juvenile delinquents[6]
- Indians[7] and other Native Americans[8]
- aliens[9] (even illegal aliens)[10]
- prisoners[11]
- felons[12]

Footnotes

1 Whren v. U.S., 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (holding that the Constitution prohibits selective enforcement of the law based on considerations such as race); Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995) (holding that at the heart of the Constitution's guarantee of equal protection lies the simple command that government must treat citizens as individuals rather than as components of racial, religious, sexual, or national classes).

2 Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983).
As to classifications based on gender, see §§ 869 to 879.

3 Application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).
As to discrimination against minors, see § 889.

4 City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (holding that legislative classifications based on illegitimacy are subject to a somewhat heightened review on an equal protection challenge); U. S. v. Clark, 445 U.S. 23, 100 S. Ct. 895, 63 L. Ed. 2d 171 (1980); Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619, 93 S. Ct. 1700, 36 L. Ed. 2d 543 (1973); Gomez v. Perez, 409 U.S. 535, 93 S. Ct. 872, 35 L. Ed. 2d 56 (1973); Pemberthy v. Beyer, 19 F.3d 857 (3d Cir. 1994); Cantu v. Sapenter, 937 S.W.2d 550 (Tex. App. San Antonio 1996), writ denied, (June 12, 1997).

5 Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997); McGarvey v. Magee-Womens Hospital, 340 F. Supp. 751 (W.D. Pa. 1972), aff'd, 474 F.2d 1339 (3d Cir. 1973).

6 Felton v. Fayette School Dist., 875 F.2d 191, 53 Ed. Law Rep. 850 (8th Cir. 1989).

7 Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979); Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 97 S. Ct. 911, 51 L. Ed. 2d 173 (1977); Alaska Chapter, Associated General Contractors of America, Inc. v. Pierce, 694 F.2d 1162 (9th Cir. 1982).

8 Naliielua v. State of Hawaii, 795 F. Supp. 1009 (D. Haw. 1990), judgment aff'd, 940 F.2d 1535 (9th Cir. 1991).

9 U.S. v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990) (holding that aliens are entitled to constitutional protections when they have come within the territory of the United States and develop substantial connections with this country); Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984); Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); Dandamudi v. Tisch, 686 F.3d 66 (2d Cir. 2012); An Na Peng v. Holder, 673 F.3d 1248 (9th Cir. 2012).
As to the application of equal protection to aliens living in the United States, generally, see Am. Jur. 2d, Aliens and Citizens §§ 1837 to 1842.

10 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); U.S. v. Gomez, 797 F.2d 417 (7th Cir. 1986); Dynasty Sample Co. v. Beltran, 224 Ga. App. 90, 479 S.E.2d 773 (1996).

11 Cornett v. Donovan, 51 F.3d 894 (9th Cir. 1995), as amended without opinion, (May 23, 1995); Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, 93 F.3d 910, 113 Ed. Law Rep. 30 (D.C. Cir. 1996); Murphy v. Raoul, 380 F. Supp. 3d 731 (N.D. Ill. 2019); Jarrett v. Westchester County Dept. of Health, 169 Misc. 2d 320, 646 N.Y.S.2d 223 (Sup 1996).
Fourteenth Amendment right to equal protection survives incarceration. Hill v. Washington State Dept. of Corrections, 628 F. Supp. 2d 1250 (W.D. Wash. 2009), subsequent determination, 2009 WL 1405020 (W.D. Wash. 2009).

12 Owens v. Barnes, 711 F.2d 25 (3d Cir. 1983); U.S. v. McKenzie, 99 F.3d 813 (7th Cir. 1996).

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16B Am. Jur. 2d Constitutional Law § 842

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

d. Who Is Protected

§ 842. Corporations and other business entities entitled to protection under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3012

A private corporation is a person within the meaning of the Equal Protection Clause of the 14th Amendment[1] and entitled to the guarantee of equal protection of the law.[2] Similarly, a business entity may constitute a person under the Equal Protection Clause and entitled to its protection.[3]

A foreign corporation that is not within the jurisdiction of a state is not protected by the Equal Protection Clause from discrimination by the state in favor of its residents with respect to rights in property within its borders.[4] However, a foreign corporation going into a state to recover possession of property wrongfully taken from it and brought into that state is, for that purpose, within the protection of the Equal Protection Clause.[5] A foreign corporation, after domestication, is entitled to equal protection with the state's own corporate progeny at least to the extent that their property is entitled to an equally favorable ad valorem tax basis.[6]

Footnotes

1 Am. Jur. 2d, Corporations § 66.

2 Garcia v. Four Points Sheraton LAX, 188 Cal. App. 4th 364, 115 Cal. Rptr. 3d 685 (2d Dist. 2010); Riverstone Co. v. Kraft Homes L.L.C., 158 Ohio Misc. 2d 12, 2010-Ohio-3516, 931 N.E.2d 1179 (Mun. Ct. 2010).

3 Applegate, LP v. City of Frederick, Maryland, 179 F. Supp. 3d 522 (D. Md. 2016).

As to a contract between a cooperative association and each of its members being protected by the constitutional safeguards inhibiting laws denying equal protection, see Am. Jur. 2d, Cooperative Associations § 16.

4 Am. Jur. 2d, Foreign Corporations § 104.

5 Am. Jur. 2d, Foreign Corporations § 104.

6 WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968); Wheeling Steel Corp. v. Glander, 337 U.S. 562, 69 S. Ct. 1291, 93 L. Ed. 1544, 55 Ohio L. Abs. 305 (1949).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

d. Who Is Protected

§ 843. States, counties, and municipal corporations not entitled to protection under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3011

The Equal Protection Clause of the 14th Amendment does not protect states.[1] Accordingly, as a general rule, political subdivisions of the state,[2] such as counties,[3] cities,[4] and municipal corporations,[5] do not receive protection from the Equal Protection Clause, and cannot invoke the Clause against an act of the state legislature.

Footnotes

1 Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976) (holding that claims brought by states on their own behalf cannot be predicated on alleged violations of the Equal Protection Clause because that Clause protects people, not states).

2 Riverside v. State, 190 Ohio App. 3d 765, 2010-Ohio-5868, 944 N.E.2d 281 (10th Dist. Franklin County 2010).
The right of equal protection of the laws accrues to individual citizens, not to units of government. San Diego County Water Authority v. Metropolitan Water Dist. of Southern California, 12 Cal. App. 5th 1124, 220 Cal. Rptr. 3d 346 (1st Dist. 2017), as modified without opinion on denial of reh'g, (July 18, 2017).

3 New Castle County v. Chrysler Corp., 681 A.2d 1077 (Del. Super. Ct. 1995), judgment aff'd, 676 A.2d 905 (Del. 1996).

4 State v. City of Birmingham, 2019 WL 6337424 (Ala. 2019).

5 Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933); Board of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ., 911 F. Supp. 2d 631, 293 Ed. Law Rep. 272 (W.D. Tenn. 2012); Town of Northville v. Village of Sheridan, 274 Ill. App. 3d 784, 211 Ill. Dec. 362, 655 N.E.2d 22 (3d Dist. 1995); Board of Com'rs of Howard County v. Kokomo City Plan Commission, 263 Ind. 282, 330 N.E.2d 92 (1975); Borough of Rocky Hill v. State, 420 N.J. Super. 365, 21 A.3d 657, 268 Ed. Law Rep. 911 (Ch. Div. 2010).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

1. 14th Amendment

d. Who Is Protected

§ 844. Class-of-one claims

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3042

A.L.R. Library

Class-of-One Equal Protection Claims Based upon Law Enforcement Actions, 86 A.L.R.6th 173
Class-of-One Equal Protection Claims Based Upon Real Estate Development, Zoning, and Planning, 68 A.L.R.6th 229
Application of Class-of-One Theory of Equal Protection to Public Employment, 32 A.L.R.6th 457

A class, for purposes of analysis under the Equal Protection Clause of the 14th Amendment, can consist of a single member,[1] and be defined by reference to the discrimination itself.[2] While the principal target of the Equal Protection Clause is discrimination against members of vulnerable groups, the Clause also protects "class-of-one" plaintiffs victimized by wholly arbitrary acts.[3] A person thus need not be a member of a traditionally protected class in order to allege an equal protection violation,[4] and may maintain an equal protection claim as a "class-of-one"[5] as long as that person alleges that such person was treated differently from similarly situated persons[6] and that the different treatment was intentional[7] and had no rational basis,[8] or that the government is treating similarly situated individuals differently because of a totally illegitimate animus for such person.[9] The disparate

treatment, to be actionable, must not be accidental,[10] negligent,[11] or flow from inadvertence or some kind of permissible governmental classification.[12] Although a person can be a member of a class with only one member, such person must be singled out because of one's membership in the class and not be just the random victim of governmental incompetence; the state's act of singling out an individual for differential treatment does not itself create the class.[13]

Observation:

A "class-of-one" equal protection claim is not cognizable in the public employment context.[14]

CUMULATIVE SUPPLEMENT

Cases:

Normally, a class-of-one plaintiff asserting an equal protection claim will show an absence of rational basis by identifying some comparatorthat is, some similarly situated person who was treated differently; if all principal characteristics of the two individuals are the same, and one received more favorable treatment, this may show there was no proper motivation for the disparate treatment. U.S. Const. Amend. 14. 145 Fisk, LLC v. Nicklas, 986 F.3d 759 (7th Cir. 2021).

[END OF SUPPLEMENT]

Footnotes

1 Indiana State Teachers Ass'n v. Board of School Com'rs of the City of Indianapolis, 101 F.3d 1179, 114 Ed. Law Rep. 766 (7th Cir. 1996).

2 Indiana State Teachers Ass'n v. Board of School Com'rs of the City of Indianapolis, 101 F.3d 1179, 114 Ed. Law Rep. 766 (7th Cir. 1996).

3 Indiana State Teachers Ass'n v. Board of School Com'rs of the City of Indianapolis, 101 F.3d 1179, 114 Ed. Law Rep. 766 (7th Cir. 1996).

4 Tuskowski v. Griffin, 359 F. Supp. 2d 225 (D. Conn. 2005).

5 Village of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).

6 Gianfrancesco v. Town of Wrentham, 712 F.3d 634 (1st Cir. 2013); Analytical Diagnostic Labs, Inc. v. Kusel, 626 F.3d 135 (2d Cir. 2010); Newark Cab Association v. City of Newark, 901 F.3d 146 (3d Cir. 2018); Siena Corporation v. Mayor and City Council of Rockville Maryland, 873 F.3d 456 (4th Cir. 2017); Rountree v. Dyson, 892 F.3d 681 (5th Cir. 2018), cert. denied, 139 S. Ct. 595, 202 L. Ed. 2d 428 (2018); Johnson v. Morales, 946 F.3d 911 (6th Cir. 2020); Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019); Tuskowski v. Griffin, 359 F. Supp. 2d 225 (D. Conn. 2005); Clark v. Adult Parole Authority, 151 Ohio St. 3d 522, 2017-Ohio-8391, 90 N.E.3d 909 (2017).

To be similarly situated for purposes of a class-of-one equal protection claim, a comparator must be identical or directly comparable to the plaintiff in all material respects. Miller v. City of Monona, 784 F.3d 1113, 91 Fed. R. Serv. 3d 833 (7th Cir. 2015); Robbins v. Becker, 794 F.3d 988 (8th Cir. 2015).

7 Gianfrancesco v. Town of Wrentham, 712 F.3d 634 (1st Cir. 2013); Analytical Diagnostic Labs, Inc. v. Kusel, 626 F.3d 135 (2d Cir. 2010); Newark Cab Association v. City of Newark, 901 F.3d 146 (3d Cir. 2018); Siena Corporation v. Mayor and City Council of Rockville Maryland, 873 F.3d 456 (4th Cir. 2017); Rountree v. Dyson, 892 F.3d 681 (5th Cir. 2018), cert. denied, 139 S. Ct. 595, 202 L. Ed. 2d 428 (2018); Johnson v. Morales, 946 F.3d 911 (6th Cir. 2020); Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019); Tuskowski v. Griffin, 359 F. Supp. 2d 225 (D. Conn. 2005); Clark v. Adult Parole Authority, 151 Ohio St. 3d 522, 2017-Ohio-8391, 90 N.E.3d 909 (2017).

A showing of intent required for a claim of a violation of the Equal Protection Clause under a class-of-one theory must consist of more than allegations of unequal treatment or adverse effect; rather, a party must show that the decisionmaker selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects. Greco v. Senchak, 25 F. Supp. 3d 512 (M.D. Pa. 2014), aff'd, 627 Fed. Appx. 146 (3d Cir. 2015).

8 Gianfrancesco v. Town of Wrentham, 712 F.3d 634 (1st Cir. 2013); Analytical Diagnostic Labs, Inc. v. Kusel, 626 F.3d 135 (2d Cir. 2010); Newark Cab Association v. City of Newark, 901 F.3d 146 (3d Cir. 2018); Siena Corporation v. Mayor and City Council of Rockville Maryland, 873 F.3d 456 (4th Cir. 2017); Rountree v. Dyson, 892 F.3d 681 (5th Cir. 2018), cert. denied, 139 S. Ct. 595, 202 L. Ed. 2d 428 (2018); Johnson v. Morales, 946 F.3d 911 (6th Cir. 2020); Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019); Tuskowski v. Griffin, 359 F. Supp. 2d 225 (D. Conn. 2005); Clark v. Adult Parole Authority, 151 Ohio St. 3d 522, 2017-Ohio-8391, 90 N.E.3d 909 (2017).

A "class-of-one" plaintiff alleging an equal protection violation may demonstrate that government action lacks a rational basis either by negativing every conceivable basis which might support the government action or by showing that the challenged action was motivated by animus or ill will. Cahoo v. SAS Analytics Inc., 912 F.3d 887 (6th Cir. 2019); Dibbs v. Hillsborough County, Fla., 67 F. Supp. 3d 1340 (M.D. Fla. 2014), aff'd, 625 Fed. Appx. 515 (11th Cir. 2015).

9 Murphy v. Village of Plainfield, 918 F. Supp. 2d 753 (N.D. Ill. 2013).

10 Fares Pawn, LLC v. Indiana Dept. of Financial Institutions, 755 F.3d 839 (7th Cir. 2014); Sprouse v. Ryan, 346 F. Supp. 3d 1347 (D. Ariz. 2017).

11 Fares Pawn, LLC v. Indiana Dept. of Financial Institutions, 755 F.3d 839 (7th Cir. 2014).

12 Levenstein v. Salafsky, 414 F.3d 767, 199 Ed. Law Rep. 615 (7th Cir. 2005).

13 Albright v. Oliver, 975 F.2d 343 (7th Cir. 1992), judgment aff'd, 510 U.S. 266, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994).

14 Carney v. Miller, 287 Neb. 400, 842 N.W.2d 782 (2014).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(1) Power of Classification

§ 845. Rule permitting classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3039

Although class legislation is obnoxious to the prohibitions of the 14th Amendment,[1] the equal protection guarantee of the 14th Amendment does not take from the states all power of classification.[2] As a matter of fact, as some of the courts have remarked, all legislation involves classification.[3] Most laws differentiate in some fashion between classes of persons,[4] and the Equal Protection Clause does not forbid such classifications[5] but simply keeps governmental decision makers from treating differently persons who are in all relevant respects alike.[6] It is class legislation, discriminating against some and favoring others, that is prohibited by the equal protection guarantee.[7] A classification may not be drawn for the purpose of disadvantaging the group burdened by a law under the Equal Protection Clause; rather, the classification must advance a state interest that is separate from the classification itself.[8] Equal protection does not prohibit legislative bodies from making classifications, but simply requires that laws or other governmental regulations be justified by sufficient reasons, the necessary quantum of which varies depending on the nature of the classification;[9] a state is prohibited from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation.[10]

The Equal Protection Clause of the Fourteenth Amendment protects individuals from governmental discrimination.[11] The function of the Equal Protection Clause is to measure the validity of classifications created by state laws.[12] The Equal Protection

Clause does place a limit on government by classification, and when that limit is exceeded the law is unconstitutional.[13] It provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others and for contending that general rules are being applied in an arbitrary or discriminatory way.[14]

Footnotes

1 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

2 Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981); Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); Morris v. City of New Orleans, 350 F. Supp. 3d 544 (E.D. La. 2018).
Classification does not of itself deprive a group of equal protection. Somers v. Superior Court, 172 Cal. App. 4th 1407, 92 Cal. Rptr. 3d 116 (1st Dist. 2009).

3 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996) (holding that the 14th Amendment's promise that no person shall be denied equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with a resulting disadvantage to various groups or persons).
Classification is the essence of all legislation, and only those classifications which are invidious, arbitrary, or irrational offend the Equal Protection Clause. Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); U.S. v. Presley, 52 F.3d 64 (4th Cir. 1995).

4 Harsco Corp. v. Tracy, 86 Ohio St. 3d 189, 1999-Ohio-155, 712 N.E.2d 1249 (1999).

5 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009); Harsco Corp. v. Tracy, 86 Ohio St. 3d 189, 1999-Ohio-155, 712 N.E.2d 1249 (1999).

6 Harris v. Hahn, 827 F.3d 359, 333 Ed. Law Rep. 568 (5th Cir. 2016); Nichols v. Harris, 17 F. Supp. 3d 989 (C.D. Cal. 2014); Marcello v. Currey, 364 F. Supp. 3d 155 (D. Conn. 2019).

7 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996); Douglas v. People of State of Cal., 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963).

8 Bassett v. Snyder, 59 F. Supp. 3d 837 (E.D. Mich. 2014).

9 People v. Delacy, 192 Cal. App. 4th 1481, 122 Cal. Rptr. 3d 216 (1st Dist. 2011).

10 In re Edgar C., 2014 IL App (1st) 141703, 388 Ill. Dec. 438, 24 N.E.3d 346 (App. Ct. 1st Dist. 2014).

11 Turner v. Ferguson, 2020 WL 97526 (E.D. Wis. 2020).

12 City of Baton Rouge/Parish of East Baton Rouge v. Myers, 145 So. 3d 320 (La. 2014).

13 Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

14 Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).

16B Am. Jur. 2d Constitutional Law § 846

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(1) Power of Classification

§ 846. Legislative discretion and power to make classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3039

One of the basic principles involved in considering the validity of legislation assailed under the equality provisions of the Federal and State Constitutions is that in the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion.[1] With regard to equal protection claims, a legislature need not strike at all evils at the same time or in the same way; a legislature may implement its program step by step, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations.[2] The task of classifying persons for benefits inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.[3] Nonetheless, a statutory classification must advance legitimate legislative goals in a rational fashion in order to satisfy the requirements of equal protection.[4] Therefore, whenever the power to regulate exists, the details of the legislation and the proper exceptions to be made rest primarily within the discretion of Congress and the state legislatures.[5]

Footnotes

1 Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982) (holding that the Equal Protection Clause allows the states considerable leeway to enact legislation that may appear to affect similarly situated people differently); Zurcher v. Stanford Daily, 436 U.S. 547, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978); Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997); City of Beatrice v. Meints, 20 Neb. App. 776, 830 N.W.2d 524 (2013); Konkel v. Acuity, 2009 WI App 132, 321 Wis. 2d 306, 775 N.W.2d 258 (Ct. App. 2009).

2 Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

3 U.S. R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 101 S. Ct. 453, 66 L. Ed. 2d 368 (1980).

The Equal Protection Clause does not mean that a state may not draw lines that treat one class of individuals differently from others; the test is whether the difference in treatment is an invidious discrimination. Edwards v. State, 139 So. 3d 827 (Ala. Crim. App. 2013).

4 Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981).

5 Clark v. Paul Gray, Inc., 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939); Thomas v. Housing and Redevelopment Authority of Duluth, 234 Minn. 221, 48 N.W.2d 175 (1951).

Where there are "plausible reasons" for Congress's action with regard to a statute which is subject to an equal protection challenge, the court's inquiry is at an end. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993); Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 847. Judicial review of classifications, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3046

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Validity, Construction, and Application of State and Municipal Enactments Regulating Lobbying and of Lobbying Contracts, 35 A.L.R.6th 1

Whether a classification of persons or objects for the purpose of legislative regulation or control is based upon substantial differences or is arbitrary and consequently illegal is a judicial question reviewable by the courts.[1] At the same time, the question of classification is primarily for the legislature and it can never become a judicial question except for the purpose of determining, in any given situation, whether the legislative action is clearly unreasonable.[2] Where there are "plausible reasons" for Congress's action with regard to a statute which is subject to an equal protection challenge, a court's inquiry is at an end.[3]

Stated another way, in assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification,[4] keeping in mind that the validity of a broad legislative classification is not properly adjudged by focusing solely on that portion of the disfavored class that is affected most heartily by its terms.[5] Review of legislative enactments by means of a rational basis analysis under the Equal Protection Clause must be a paradigm of judicial restraint,[6] prohibiting a court from sitting as a super legislature to judge the wisdom or desirability of the legislative policy determinations underlying the legislation,[7] and the legislative classification is subject to judicial revision only to the extent of seeing that it is founded on real distinctions in the subjects classified and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition.[8] It is not the province of the courts to create substantive constitutional rights in the name of guaranteeing equal protection of the laws.[9] The Equal Protection Clause does not require the displacement of managerial discretion by judicial supervision.[10] In determining whether a statutory purpose is legitimate for purposes of equal protection analysis, substantial judicial deference is required so that a court does not substitute its value judgments for those established by the democratically chosen branch; that deference to the legislative will, however, must not lead to approval of a pernicious legislative purpose or one that does not comport with traditional notions of the proper role of government.[11]

The leniency of a rational basis scrutiny under the Equal Protection Clause provides the political branches with flexibility to address problems incrementally and to engage in the delicate line-drawing process of legislation without undue interference from the judicial branch; it gives the legislative branch its rightful independence and allows the political branches of government to function properly.[12] Under an equal protection analysis, the rational basis standard does not require that the state must necessarily choose the fairest or best means of advancing its goals.[13]

Observation:

In an equal protection analysis, it is assumed that the objectives articulated by the legislature are the actual purposes of the statute, unless an examination of the circumstances forces the court to conclude that they could not have been a goal of the legislation.[14]

Traditional equal protection principles are departed from only when a challenged statute places burdens on suspect classes of persons or on a constitutional right that is deemed fundamental.[15] Therefore, unless a classification is arbitrary and not founded on any substantial distinction or apparent natural reason which suggests the necessity or propriety of different legislation, a court has no right to interfere with the exercise of legislative discretion.[16] A government whose statute is challenged on equal protection grounds is not compelled to verify logical assumptions with statistical evidence.[17] However, if a classification is clearly fanciful, capricious, arbitrary, or unnatural, it is, of course, the duty of the courts, in the event that questions concerning constitutional equality are properly raised, to uphold constitutional rights and declare the statute invalid.[18] Great liberality has always been indulged in the matter of classification[19] at least in the traditional areas of economic or social legislation.[20]

Footnotes

1 Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941); State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943).

2 Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A.2d 177, 156 A.L.R. 568 (1944); Hansen v. Raleigh, 391 Ill. 536, 63 N.E.2d 851, 163 A.L.R. 1425 (1945); Knudson v. Linstrum, 233 Iowa 709, 8 N.W.2d 495 (1943).

3 F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993); U.S. R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 101 S. Ct. 453, 66 L. Ed. 2d 368 (1980).

4 Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979).

5 Schweiker v. Hogan, 457 U.S. 569, 102 S. Ct. 2597, 73 L. Ed. 2d 227 (1982).

6 Bah v. City of Atlanta, 103 F.3d 964 (11th Cir. 1997).

As to the rational basis test, see §§ 850 to 852.

7 Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996); Richenberg v. Perry, 97 F.3d 256 (8th Cir. 1996).

8 Sugarman v. Dougall, 413 U.S. 634, 93 S. Ct. 2842, 37 L. Ed. 2d 853 (1973); McGinnis v. Royster, 410 U.S. 263, 93 S. Ct. 1055, 35 L. Ed. 2d 282 (1973); Loomis v. Board of Ed. of School Dist. of Philadelphia, 376 Pa. 428, 103 A.2d 769 (1954).

9 Kyle-Labell v. Selective Service System, 364 F. Supp. 3d 394 (D.N.J. 2019).

10 Integrity Collision Center v. City of Fulshear, 837 F.3d 581 (5th Cir. 2016).

11 Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995).

12 Haves v. City of Miami, 52 F.3d 918 (11th Cir. 1995).

13 Robinson v. Marshall, 66 F.3d 249 (9th Cir. 1995).

14 Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

15 Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).

16 Hauge v. City of Chicago, 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937); Old Dearborn Distributing Co. v. Seagram-Distillers Corporation, 299 U.S. 183, 57 S. Ct. 139, 81 L. Ed. 109, 106 A.L.R. 1476 (1936); Associated Hospital Service, Inc. v. City of Milwaukee, 13 Wis. 2d 447, 109 N.W.2d 271, 88 A.L.R.2d 1395 (1961).

17 Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979); Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976).

18 State v. Holtgreve, 58 Utah 563, 200 P. 894, 26 A.L.R. 696 (1921).

When properly attacked, a classification must disclose its rational basis; a discrimination is not to be supported by mere fanciful conjecture, and it cannot stand as reasonable if it offends the plain standards of common sense. Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (1937); Borden's Farm Products Co. v. Baldwin, 293 U.S. 194, 55 S. Ct. 187, 79 L. Ed. 281 (1934).

19 State v. Fairmont Creamery Co. of Nebraska, 153 Iowa 702, 133 N.W. 895 (1911).

20 F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).

As to the standard of review, generally, see § 849.

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16B Am. Jur. 2d Constitutional Law § 848

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 848. Matters considered in judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3046

In determining whether a classification challenged as violating equal protection is rationally related to a legitimate state purpose, the courts must answer (1) whether the challenged legislation does have a legitimate purpose, and (2) whether it was reasonable for the state's lawmakers to believe that use of the challenged classification would promote that purpose.[1] A violation of the Equal Protection Clause occurs only when, inter alia, a governmental action in question classifies or distinguishes between two or more relevant persons or groups. If the challenged governmental action does not appear to classify or distinguish between two or more relevant persons or groups, then the action, even if irrational, does not deny them equal protection of the laws.[2] In determining whether or not a state law violates the Federal Equal Protection Clause, a court must consider the facts and circumstances of the law, the interests which the state claims to be protecting, and the interests of those who are disadvantaged by the classification.[3] While the proper classification under a statute for purposes of an equal protection analysis is not an exact science, scrutiny must begin with the statutory classification itself; but only when it is shown that the legislation has a substantial disparate impact on classes defined in a different fashion may analysis continue on the basis of the impact on those classes.[4]

Under the Equal Protection Clause, a showing of disproportionate impact alone is not enough to establish a constitutional violation because the mere existence of disparate treatment, even widely disparate treatment, does not furnish an adequate basis under the Equal Protection Clause for any inference that the discrimination was impermissibly motivated.[5] Disparate treatment

is not necessarily a denial of equal protection since the states must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the state to remedy every ill.[6] The courts must look to the effect and not to the form of the classification;[7] they should keep in mind that the validity of a broad legislative classification is not properly adjudged by focusing solely on that portion of the disfavored class that is affected most heartily by its terms.[8]

A classification is proper so long as it is not a suspect one and there is a reasonable and proper basis therefor, regardless of what the motives and intent of the legislature were,[9] since a legislative act may not be violative of the Equal Protection Clause solely because of the motivations of the legislators who voted for it[10] or because the legislature was mistaken in its beliefs.[11]

In determining whether a basis of classification is reasonable, the court is concerned with the policy, wisdom, or expediency of the classification.[12]

The Equal Protection Clause gives the federal courts no power to impose upon the states their views of what constitutes wise economic or social policy.[13] In reviewing the constitutionality under the Equal Protection Clause of a statutory classification, it is not the function of a court to hypothesize independently on the desirability or feasibility of any possible alternatives to the statutory scheme as formulated.[14] A classification, though discriminatory, is not arbitrary or violative of the Equal Protection Clause if any state of facts reasonably can be conceived that would sustain it[15] or if the validity of the classification is fairly debatable.[16]

Caution:

Where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of the classification must be sustained unless the classification rests on grounds wholly irrelevant to the achievement of any legitimate governmental objective; however, such presumption of constitutional validity disappears if the statutory classification is predicated on criteria that are, in a constitutional sense, "suspect."[17]

Proof of discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.[18] The challenger must convince the court that the legislative facts on which the classification is apparently based could not reasonably have been conceived to be true by the governmental decision maker.[19] Thus, one who assails a statute on the ground that it involves a classification denying the equal protection of the laws must clearly establish the invalidity of such statute.[20] Determining whether an invidious discriminatory purpose was a motivating factor in the legislature's passage of a law demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. Sometimes a clear pattern emerges from the effect of the state action even when the governing legislation appears neutral on its face.[21]

Footnotes

1 Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).

2 Vera v. Tue, 73 F.3d 604 (5th Cir. 1996).

3 Mathews v. Lucas, 427 U.S. 495, 96 S. Ct. 2755, 49 L. Ed. 2d 651 (1976); Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972); Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

4 Califano v. Boles, 443 U.S. 282, 99 S. Ct. 2767, 61 L. Ed. 2d 541 (1979).

5 Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997); Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995); Copeland v. Machulis, 57 F.3d 476, 1995 FED App. 0182P (6th Cir. 1995).

6 Suffolk Parents of Handicapped Adults v. Wingate, 101 F.3d 818 (2d Cir. 1996).

7 American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965); City of Seattle v. Rogers, 6 Wash. 2d 31, 106 P.2d 598, 130 A.L.R. 1498 (1940).

8 Schweiker v. Hogan, 457 U.S. 569, 102 S. Ct. 2597, 73 L. Ed. 2d 227 (1982).

9 Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981); Farrington v. Pinckney, 1 N.Y.2d 74, 150 N.Y.S.2d 585, 133 N.E.2d 817 (1956).

10 Palmer v. Thompson, 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971).

11 Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

12 Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996); Roth v. Public Emp. Retirement Bd., 44 Ohio App. 2d 155, 71 Ohio Op. 2d 240, 73 Ohio Op. 2d 143, 336 N.E.2d 448 (10th Dist. Franklin County 1975).

In the ordinary case, a law will be sustained under the Equal Protection Clause if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous. Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

Whether embodied in the 14th Amendment or inferred from the Fifth Amendment, equal protection is not a license for the courts to judge the wisdom, fairness, or logic of legislative choices. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).

Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision. U.S. v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

Racial classifications are constitutional under Equal Protection Clause only if they are narrowly tailored to further compelling governmental interests. U.S. Const.Amend. 14. Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

As to the consideration of wisdom, expediency, and related qualities in determining the constitutionality of statutes, generally, see § 185.

13 Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977); Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970).

14 Caban v. Mohammed, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979).

15 New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973); Schilb v. Kuebel, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

16 Presnell v. Leslie, 3 N.Y.2d 384, 165 N.Y.S.2d 488, 144 N.E.2d 381 (1957).

17 Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980); Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996).

18 Stehney v. Perry, 101 F.3d 925 (3d Cir. 1996); Cross v. State of Ala., State Dept. of Mental Health & Mental Retardation, 49 F.3d 1490 (11th Cir. 1995).

19 New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979).

20 Bohus v. Board of Election Com'rs, 447 F.2d 821 (7th Cir. 1971); In re Hawaiian Land Co., 53 Haw. 45, 487 P.2d 1070 (1971); People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).

As to the sufficiency and quantum of proof of unconstitutionality, see §§ 191 to 193.

21 Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).

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16B Am. Jur. 2d Constitutional Law § 849

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 849. Standards of review of classifications, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3050 to 3082

When a statute is subject to an equal protection challenge, the level of judicial scrutiny varies with the type of classification utilized and the nature of the right affected.[1] When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies to an equal protection challenge depends upon the basis for the classification.[2] A court examines constitutional equal protection claims under a sliding scale of scrutiny levels; it begins by weighing the importance of the interests affected, and as the right asserted becomes more fundamental, the challenged law is subjected to more rigorous scrutiny at a more elevated position on the sliding scale.[3] Three degrees of scrutiny are applied by the courts in analyzing statutes challenged under the Equal Protection Clause:[4]

(1) if a legislative classification disadvantages a "suspect class" or impinges upon the exercise of a "fundamental right," then the courts will employ strict scrutiny and the statute must fall unless the government can demonstrate that the classification has been precisely tailored to serve a compelling governmental interest;

(2) if the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, it will be treated under intermediate scrutiny and the statutory classification must serve important governmental objectives and must be substantially related to the achievement of those objectives in order to withstand such scrutiny; and

(3) if neither strict nor intermediate scrutiny is appropriate, then the statute will be tested for mere rationality.

When evaluating a classification challenged as violating the Equal Protection Clause, a court must first determine which of several tiers of scrutiny should be utilized,[5] and then it must determine whether the statute meets the relevant standard of review.[6] In an equal protection challenge to a statute, the level of judicial scrutiny applied to a particular classification may be dispositive.[7]

Equal protection of the laws is essentially a direction that all persons similarly situated should be treated alike; governmental classifications are subject to strict scrutiny if they target a suspect class or involve a fundamental right. However, in the absence of a suspect classification or the denial of a federal fundamental right, a state regulation need only be rationally related to a legitimate government purpose.[8] To determine whether certain legislative classifications warrant more demanding constitutional analysis in an equal protection challenge, four factors are relevant: (1) the history of invidious discrimination against the class burdened by the legislation, (2) whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society, (3) whether the distinguishing characteristic is "immutable" or beyond the class members' control, and (4) the political power of the subject class.[9]

Footnotes

1 Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson, 938 P.2d 504 (Colo. 1997).

2 Leib v. Hillsborough County Public Transp. Com'n, 558 F.3d 1301 (11th Cir. 2009).

3 Lot 04B & 5C, Block 83 Townsite v. Fairbanks North Star Borough, 208 P.3d 188 (Alaska 2009).

4 Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d 794, 9 Ed. Law Rep. 23 (1983); Azam v. District of Columbia Taxicab Commission, 46 F. Supp. 3d 38 (D.D.C. 2014); Christie v. Coors Transp. Co., 933 P.2d 1330 (Colo. 1997); Baker v. City of Ottumwa, 560 N.W.2d 578 (Iowa 1997); Lennartz v. Oak Point Associates, P.A., 167 N.H. 459, 112 A.3d 1159 (2015); Rowitz v. McClain, 2019-Ohio-5438, 138 N.E.3d 1241 (Ohio Ct. App. 10th Dist. Franklin County 2019).

When a court finds that a classification system treats similarly situated persons differently and so implicates equal protection, it must determine which level of scrutiny should be employed to evaluate the constitutionality of that classification: (1) the rational basis test to determine whether a statutory classification bears some reasonable relationship to a valid legislative purpose, (2) the heightened scrutiny test to determine whether a statutory classification substantially furthers a legitimate legislative purpose, or (3) the strict scrutiny test to determine whether a statutory classification is necessary to serve some compelling state interest. Hodges v. Johnson, 288 Kan. 56, 199 P.3d 1251, 67 U.C.C. Rep. Serv. 2d 954 (2009).

Legislation which creates a suspect classification or impinges on the exercise of a fundamental right is subject to strict scrutiny under the Equal Protection Clause and will be upheld only if it is necessary to further a compelling state interest, but all other legislation will satisfy constitutional requirements if it bears a rational relationship to a legitimate state purpose. Butts v. Aultman, 953 F.3d 353 (5th Cir. 2020); Ruelas v. Superior Court, 235 Cal. App. 4th 374, 185 Cal. Rptr. 3d 343 (6th Dist. 2015).

In an equal protection challenge, legislative classifications involving either a suspect class or a fundamental right are analyzed with strict scrutiny, and legislative classifications not involving a suspect class or fundamental right are analyzed using rational basis review. Sherman T. v. Karyn N., 286 Neb. 468, 837 N.W.2d 746 (2013); Krueger v. North Carolina Criminal Justice Educ. and Training Standards Com'n, 230 N.C. App. 293, 750 S.E.2d 33 (2013).

5 Wright v. Incline Village General Improvement Dist., 665 F.3d 1128 (9th Cir. 2011); A.H. v. Minersville Area School District, 408 F. Supp. 3d 536, 372 Ed. Law Rep. 835 (M.D. Pa. 2019); Kansas Public Employees Retirement System v. Reimer & Koger Associates, Inc., 261 Kan. 17, 927 P.2d 466 (1996); State v. Fowler, 197 N.C. App. 1, 676 S.E.2d 523 (2009).

People v. Yanez, 42 Cal. App. 5th 91, 255 Cal. Rptr. 3d 44 (1st Dist. 2019).

6 State v. Fowler, 197 N.C. App. 1, 676 S.E.2d 523 (2009).

7 In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

8 E. Spire Communications, Inc. v. Baca, 269 F. Supp. 2d 1310 (D.N.M. 2003), aff'd, 392 F.3d 1204 (10th Cir. 2004).

9 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

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16B Am. Jur. 2d Constitutional Law § 850

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Constitutional Law
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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 850. Rational basis test for judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

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Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R.5th 391

Governmental classifications that do not target suspect classes or groups or fundamental interests are subject only to the more deferential rational basis review.[1] The rational basis standard of analysis under the Equal Protection Clause is a relatively relaxed standard reflecting the court's awareness that the drawing of lines which creates distinctions is peculiarly a legislative task and an unavoidable one.[2] State action subject to rational basis equal protection scrutiny does not violate the 14th Amendment when it rationally furthers the purpose identified by the state.[3] If a statute does not burden a suspect group or fundamental interest in distinguishing between classes, the courts are quite reluctant to overturn the statute on the ground that it denies equal protection of the laws, and a court will not overturn such a statute, even when it thinks the statute is improvident or unwise, unless the

varied treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the legislature's actions were irrational.[4] Given the standard of review, it should come as no surprise that courts hardly ever strike down a policy as illegitimate under rational basis scrutiny for a constitutional violation.[5] Adverse, disparate treatment often does not amount to an equal protection violation where rational basis scrutiny applies.[6]

Nonsuspect classifications are accorded a strong presumption of validity when challenged on equal protection grounds, and must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the distinction.[7] Under rational basis review, a court should not expect the legislature to design a scheme that perfectly addresses the court's own concerns, nor should a court impose other methods that it would prefer.[8] Rational basis review, in the context of an equal protection challenge, is not toothless; a statutory classification fails rational basis review only when it rests on grounds wholly irrelevant to the achievement of the state's objective.[9] To support an equal protection claim, the challenged official action must be utterly unsupported by a rational basis.[10]

Footnotes

1 Minnesota State Bd. for Community Colleges v. Knight, 465 U.S. 271, 104 S. Ct. 1058, 79 L. Ed. 2d 299, 15 Ed. Law Rep. 1050 (1984); Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983); Cornerstone Christian Schools v. University Interscholastic League, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); U.S. v. Pickard, 100 F. Supp. 3d 981 (E.D. Cal. 2015); Burch v. Smathers, 990 F. Supp. 2d 1063 (D. Idaho 2014); Unkechauge Indian Nation v. Paterson, 752 F. Supp. 2d 320 (W.D. N.Y. 2010), aff'd, 645 F.3d 154 (2d Cir. 2011); Matheny v. State, 289 So. 3d 328 (Miss. Ct. App. 2020); State v. Armstrong, 143 Wash. App. 333, 178 P.3d 1048 (Div. 1 2008).

2 Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Costner v. U.S., 720 F.2d 539 (8th Cir. 1983).

Although negative attitudes or fear may often accompany irrational and therefore unconstitutional discrimination, their presence alone does not make an equal protection violation. Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001).

3 Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001).

4 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000); Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991); Pennell v. City of San Jose, 485 U.S. 1, 108 S. Ct. 849, 99 L. Ed. 2d 1 (1988); U.S. v. Presley, 52 F.3d 64 (4th Cir. 1995).

In the ordinary case, a law will be sustained under the Equal Protection Clause if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous. Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

A state may not rely on a classification whose relationship to an asserted goal is so attenuated as to render any distinction arbitrary or irrational. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); Chance Management, Inc. v. State of S.D., 97 F.3d 1107 (8th Cir. 1996).

5 Trump v. Hawaii, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018).

6 Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001).

7 Colon Health Centers of America, LLC v. Hazel, 733 F.3d 535 (4th Cir. 2013); Bailey v. Callaghan, 715 F.3d 956, 293 Ed. Law Rep. 675 (6th Cir. 2013); Medina Tovar v. Zuchowski, 950 F.3d 581 (9th Cir. 2020).

8 Chinatown Neighborhood Association v. Harris, 33 F. Supp. 3d 1085 (N.D. Cal. 2014), aff'd, 794 F.3d 1136 (9th Cir. 2015).

9 Golinski v. U.S. Office of Personnel Management, 824 F. Supp. 2d 968 (N.D. Cal. 2012).

10 Frederickson v. Landeros, 943 F.3d 1054 (7th Cir. 2019).

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16B Am. Jur. 2d Constitutional Law § 851

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 851. Rational basis test for judicial review of classifications—Matters considered

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3052 to 3058, 3065

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Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R.5th 391

Where rationality is the test, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.[1] For classification to satisfy equal protection concerns under rational basis review, the Constitution does not require the government to draw the perfect line or even to draw a line superior to some other line it might have drawn; it requires only that the line actually drawn be a rational line.[2] For purposes of the rational basis standard of review under the Equal Protection Clause, the rule need not be the least restrictive means of achieving a permissible end, and so long as the state could rationally have decided that its action would further its goal, the Equal Protection Clause is satisfied.[3] The rational basis review requires only that the classification be rational but does not require that it be the fairest or best means that could

have been used.[4] Parties challenging legislation under the Equal Protection Clause cannot prevail so long as it is evident from all the considerations presented to the legislature, and those of which the court may take judicial notice, that the question is at least debatable.[5]

On a rational basis equal protection challenge, the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.[6] Thus, the presumption of constitutionality of a legislative enactment is applicable to laws attacked as violating the equality requirements of the Federal and State Constitutions; the presumption is in favor of the legislative classification, of the reasonableness and fairness of legislative action, and of legitimate grounds of distinction, if any such grounds exist, on which the legislature acted.[7]

In a rational basis equal protection review, the state need not articulate its reasoning at the moment a particular decision is made; rather, the burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis for the classification.[8] Under the rational basis standard, the party asserting the equal protection challenge must prove beyond a reasonable doubt that the classification bears no rational relationship to a legitimate legislative purpose or government objective, or that the classification is unreasonable, arbitrary, or capricious.[9] The Equal Protection Clause does not demand for purposes of a rational basis review that the legislature or governing decision maker actually articulate at any time the purpose or rationale supporting its decision, but a court's review does require that a purpose may conceivably or may reasonably have been the purpose and policy of the relevant governmental decision maker.[10] Because legislatures are not required to articulate their reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for a challenged distinction actually motivated the legislatures, and thus, the absence of legislative facts explaining the distinction on the record has no significance on a rational basis review. On a rational basis review, the legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data,[11] and a court is not to weigh conflicting evidence as to whether an act will succeed in effectuating the legislature's stated goals.[12] Under a rational basis review, a court will accept at face value contemporaneous declarations of governmental purposes or, in the absence thereof, rationales constructed after the fact, unless its examination of the circumstances forces the court to conclude that they could not have been a goal of the classification.[13]

Footnotes

1 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000); St. Joan Antida High School Inc. v. Milwaukee Public School District, 919 F.3d 1003, 364 Ed. Law Rep. 24 (7th Cir. 2019).

2 Armour v. City of Indianapolis, Ind., 566 U.S. 673, 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

3 Tolchin v. Supreme Court of the State of N.J., 111 F.3d 1099 (3d Cir. 1997); Scariano v. Justices of Supreme Court of State of Ind., 38 F.3d 920 (7th Cir. 1994).

4 Robinson v. Marshall, 66 F.3d 249 (9th Cir. 1995); Seeley v. State, 132 Wash. 2d 776, 940 P.2d 604 (1997).

5 Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

6 Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Medina Tovar v. Zuchowski, 950 F.3d 581 (9th Cir. 2020).

7 Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996); Cornerstone Christian Schools v. University Interscholastic League, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); Independent Charities of America, Inc. v. State of Minn., 82 F.3d 791 (8th Cir. 1996); Bah v. City of Atlanta, 103 F.3d 964 (11th Cir. 1997).
The Equal Protection Clause is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).

8 Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001); Swepi, LP v. Mora County, N.M., 81 F. Supp. 3d 1075 (D.N.M. 2015).

To uphold a legislative choice, on rational basis review for an equal protection violation, the court need only find a reasonably conceivable state of facts that could provide a rational basis for the classification, and the actual motivation, or lack thereof, behind the legislation is immaterial. Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013); Love v. Beshear, 989 F. Supp. 2d 536 (W.D. Ky. 2014).

Laws enacted with animus cannot survive rational basis review under the Equal Protection Clause. Animal Legal Defense Fund v. Otter, 44 F. Supp. 3d 1009 (D. Idaho 2014).

9 People v. Diaz, 2015 CO 28, 347 P.3d 621 (Colo. 2015).

Rational basis test for determining whether a statute violates equal protection simply inquires whether the method or means employed by the statute to achieve the stated goal or purpose of the legislation are rationally related to that goal. People v. J.F., 2014 IL App (1st) 123579, 381 Ill. Dec. 313, 10 N.E.3d 398 (App. Ct. 1st Dist. 2014); LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846 (Iowa 2015).

10 Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); Donatelli v. Mitchell, 2 F.3d 508 (3d Cir. 1993); Haves v. City of Miami, 52 F.3d 918 (11th Cir. 1995); Hamich, Inc. v. State By and Through Clayburgh, 1997 ND 110, 564 N.W.2d 640 (N.D. 1997).

11 F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993); Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Hamama v. I.N.S., 78 F.3d 233, 1996 FED App. 0078P (6th Cir. 1996); Bah v. City of Atlanta, 103 F.3d 964 (11th Cir. 1997); Craig v. City of Yazoo City, Miss., 984 F. Supp. 2d 616 (S.D. Miss. 2013); State v. Morales, 240 Conn. 727, 694 A.2d 758 (1997); Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996).

Where classification involves neither a "fundamental right" nor a "suspect" classification, courts engaging in equal protection analysis are not to pronounce the classification unconstitutional unless, in the light of the facts made known or generally assumed, it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators. Armour v. City of Indianapolis, Ind., 566 U.S. 673, 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

Under the "rational basis" equal protection standard, all that is needed to uphold a state's classification scheme is to find that there are "plausible," "arguable," or "conceivable" reasons which may have been the basis for the distinction. U.S. R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 101 S. Ct. 453, 66 L. Ed. 2d 368 (1980).

While the legislative history is helpful to understanding the purpose of enacting the statute, a court is not limited to the reasons expressed by the legislature; rather, if any rational basis exists, or can be hypothesized, then the statute does not violate equal protection. Tam v. Eighth Jud. Dist. Ct., 131 Nev. 792, 358 P.3d 234, 131 Nev. Adv. Op. No. 80 (2015).

12 Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

13 Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 852. Rational basis test for judicial review of classifications—Economic and social welfare policy

Topic Summary | Correlation Table | References

West's Key Number Digest

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Social and economic legislation that does not employ suspect classifications or impinge on fundamental rights—that is, those rights that are otherwise guaranteed in the Constitution—must be upheld against an equal protection attack when the legislative means are rationally related to a legitimate governmental purpose.[1] Legislation in the economic and social welfare area, such as Medicare, is tested under the deferential standard of equal protection review under which a classification does not offend the Constitution, even if it is not made with mathematical nicety or in practice results in some inequality, if it has some "reasonable basis."[2] In the areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge if there is any reasonably conceivable set of facts that could provide a rational basis for such classification.[3] Moreover, such legislation carries with it a presumption of rationality that can be overcome only by a clear showing of arbitrariness and irrationality.[4] When social or economic legislation is at issue, the Equal Protection Clause allows the states wide latitude and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.[5]

Under equal protection analysis, where ordinary commercial transactions are at issue, rational basis review requires deference to reasonable underlying legislative judgments.[6]

With regard to economic and social welfare categorizations, the Equal Protection Clause is satisfied as long as there is (1) a plausible policy reason for the classification, (2) the legislative facts on which the classification is apparently based may rationally have been considered to be true by the governmental decisionmaker, and (3) the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.[7]

CUMULATIVE SUPPLEMENT

Cases:

Where regulation or statute affects only economic interests, state is free to create any classification scheme that does not invidiously discriminate, and court must uphold law in face of equal protection challenge if there are plausible, arguable, or conceivable reasons that may have been basis for distinction. U.S. Const. Amend. 14. San Francisco Taxi Coalition v. City and County of San Francisco, 979 F.3d 1220 (9th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 O'Bar v. Pinion, 953 F.2d 74 (4th Cir. 1991); Reid v. Rolling Fork Public Utility Dist., 979 F.2d 1084 (5th Cir. 1992); Univar, Inc. v. Geisenberger, 409 F. Supp. 3d 273 (D. Del. 2019); Silvio Membreno and Florida Ass'n of Vendors, Inc. v. City of Hialeah, 188 So. 3d 13 (Fla. 3d DCA 2016).
As to what rights are fundamental, see §§ 855, 856.
As to suspect classifications, see §§ 857 to 859.

2 Bowen v. Gilliard, 483 U.S. 587, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987); Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson, 938 P.2d 504 (Colo. 1997); Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014); Davis v. Union Pacific R. Co., 282 Mont. 233, 937 P.2d 27 (1997); City of Beatrice v. Meints, 20 Neb. App. 776, 830 N.W.2d 524 (2013).

3 F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997); Allen v. State, 327 Ark. 350, 327 Ark. 366A, 939 S.W.2d 270 (1997), as supplemented on denial of reh'g, (Mar. 17, 1997); Christie v. Coors Transp. Co., 933 P.2d 1330 (Colo. 1997); State v. Dyous, 307 Conn. 299, 53 A.3d 153 (2012).
Under traditional equal protection principles, a state retains broad discretion to classify as long as its classifications have a reasonable basis, and this principle is applicable in the areas of economics and social welfare. Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).
Lines drawn by legislatures in economic and social legislation will be respected by the United States Supreme Court against a charge of violation of the Equal Protection Clause if the law is reasonable, not arbitrary, and bears a rational relationship to a permissible state objective. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).
As to reasonableness or arbitrariness, generally, see §§ 861, 862.

4 Hodel v. Indiana, 452 U.S. 314, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981); Chance Management, Inc. v. State of S.D., 97 F.3d 1107 (8th Cir. 1996); Dumas v. Kipp, 90 F.3d 386, 111 Ed. Law Rep. 124 (9th Cir. 1996); Riddle v. Mondragon, 83 F.3d 1197 (10th Cir. 1996); Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson, 938 P.2d 504 (Colo. 1997); Blakeslee Arpaia Chapman, Inc. v. EI Constructors, Inc., 239 Conn. 708, 687 A.2d 506 (1997); Fust v. Attorney General for the State of Mo., 947 S.W.2d 424 (Mo. 1997); Hamich, Inc. v. State By and Through Clayburgh, 1997 ND 110, 564 N.W.2d 640 (N.D. 1997).

5 Crawford v. Antonio B. Won Pat International Airport Authority, 917 F.3d 1081 (9th Cir. 2019); SD Voice v. Noem, 380 F. Supp. 3d 939 (D.S.D. 2019).

6 Armour v. City of Indianapolis, Ind., 566 U.S. 673, 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

7 Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 853. Intermediate scrutiny test for judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3061

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Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R.5th 391

Equal Protection and Due Process Clause Challenges Based on Sex Discrimination—Supreme Court Cases, 178 A.L.R. Fed. 25

"Intermediate scrutiny," wherein a challenged classification need only further a substantial state interest, is employed only in limited circumstances when legislation is not facially or constitutionally invidious but nonetheless gives rise to some recurring constitutional difficulties.[1] In the case of sex[2] or gender[3] discrimination, or illegitimacy,[4] for instance, the proper standard to apply is the intermediate scrutiny standard. Same-sex couples have a fundamental right to marry, which is infringed by a state same-sex marriage ban; and the challenged ban does not survive intermediate scrutiny.[5]

To withstand intermediate scrutiny under an equal protection analysis, a statutory classification must be substantially related to an important governmental objective.[6] In determining whether governmental objectives for making a classification are important as a step in an equal protection challenge of a statute under intermediate scrutiny, the burden of justification is demanding and it rests entirely on the state.[7] To survive "intermediate scrutiny" in an equal protection challenge, a statute must not only further an important governmental interest and be substantially related to that interest but the justification for the classification must also be genuine and must not depend on broad generalizations.[8] Public safety and crime prevention are compelling government interests for purposes of intermediate scrutiny analysis of a challenged law.[9] Where proffered governmental interests are sufficiently weighty to be called important, as a step in an equal protection challenge of a statute under intermediate scrutiny, the critical inquiry is whether these governmental objectives can fairly be said to be advanced by the legislative classification.[10] Under intermediate scrutiny in an equal protection challenge to a statute, the relationship between the government's goal and the classification employed to further that goal must be substantial; in order to evaluate that relationship, it is helpful to consider whether the legislation is overinclusive or underinclusive.[11]

Caution:

The rule, formerly followed by the United States Supreme Court when analyzing so-called "benign" race or sex discrimination against white persons in favor of minorities, that called for examination of such cases under the intermediate scrutiny standard has been rejected by the Court.[12]

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a law meets intermediate scrutiny, the regulation must promote a substantial government interest that would be achieved less effectively absent the regulation, but need not be the least restrictive means of achieving the government's interest. Mitchell v. Atkins, 483 F. Supp. 3d 985 (W.D. Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).
In the event that a statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, its enforcement shall be refused on equal protection grounds, unless the state or other advocate of the classification shows that the classification has a reasonable basis. Leger v. Leger, 258 So. 3d 624 (La. Ct. App. 3d Cir. 2017), writ denied, 237 So. 3d 1191 (La. 2018).

2 Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982); Mills v. Habluetzel,

456 U.S. 91, 102 S. Ct. 1549, 71 L. Ed. 2d 770 (1982); Murray v. Pittsburgh Bd. of Public Educ., 919 F. Supp. 838, 108 Ed. Law Rep. 593 (W.D. Pa. 1996); Com. v. Scarborough, 2014 PA Super 65, 89 A.3d 679 (2014).

3 Nichols v. Harris, 17 F. Supp. 3d 989 (C.D. Cal. 2014); Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 206 P.3d 481 (2009); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Doe v. Department of Public Safety and Correctional Services, 185 Md. App. 625, 971 A.2d 975 (2009); In re Guardianship, Conservatorship of Durand, 859 N.W.2d 780 (Minn. 2015).

4 Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Com. v. Scarborough, 2014 PA Super 65, 89 A.3d 679 (2014).

Under equal protection analysis, intermediate level of scrutiny is applied to laws burdening illegitimate children for the sake of punishing the illicit relations of their parents, because visiting this condemnation on the head of an infant is illogical and unjust. Astrue v. Capato ex rel. B.N.C., 566 U.S. 541, 132 S. Ct. 2021, 182 L. Ed. 2d 887 (2012).

5 Whitewood v. Wolf, 992 F. Supp. 2d 410 (M.D. Pa. 2014).

6 Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); Tineo v. Attorney General United States of America, 937 F.3d 200 (3d Cir. 2019); Nichols v. Harris, 17 F. Supp. 3d 989 (C.D. Cal. 2014); Doe v. Wilmington Housing Authority, 88 A.3d 654 (Del. 2014); Lennartz v. Oak Point Associates, P.A., 167 N.H. 459, 112 A.3d 1159 (2015); Rowitz v. McClain, 2019-Ohio-5438, 138 N.E.3d 1241 (Ohio Ct. App. 10th Dist. Franklin County 2019).

7 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Glossip v. Missouri Dept. of Transp. and Highway Patrol Employees' Retirement System, 411 S.W.3d 796 (Mo. 2013); In re Concord Teachers (New Hampshire Retirement System), 158 N.H. 529, 969 A.2d 403 (2009).

8 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); In re Concord Teachers (New Hampshire Retirement System), 158 N.H. 529, 969 A.2d 403 (2009).

9 Fyock v. City of Sunnyvale, 25 F. Supp. 3d 1267 (N.D. Cal. 2014), aff'd, 779 F.3d 991 (9th Cir. 2015).

10 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

In justifying an official classification based on gender under an equal protection analysis, the state must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives; justification for an official classification based on gender under the Equal Protection Clause must be genuine, not hypothesized or invented post hoc in response to litigation; it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996).

11 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

12 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995) (holding that under the Equal Protection Clause, racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination; this rule obtains with equal force regardless of the race of those burdened or benefited by a particular classification); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

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16B Am. Jur. 2d Constitutional Law § 854

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 854. Strict scrutiny test for judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3062

Whenever a state law infringes upon a constitutionally protected right, an intensified and strict equal protection scrutiny of that law is undertaken.[1] Thus, classifications which are suspect, such as those based on race, or aimed at fundamental interests, such as freedom of speech, must pass the strict scrutiny test to survive an equal protection challenge.[2] Strict equal protection scrutiny must be applied to any university admissions program using racial categories or classifications.[3] The highest level of scrutiny under the Equal Protection Clause, strict scrutiny, applies to suspect classes, such as classifications based on race, religion, and national origin.[4] Discrimination among people as to the exercise of a fundamental right, such as the right to vote, or the right to interstate travel, must be closely scrutinized under the Equal Protection Clause and carefully confined.[5] In the case of legislation involving suspect classifications or touching on fundamental interests, judicial review under the Equal Protection Clause requires an active and critical analysis. Under the strict standard applied in such cases, the state bears the additional burden of establishing that it has a compelling interest that justifies the law[6] and that the law or ordinance is narrowly tailored such that there are no less restrictive means available to effectuate the desired end.[7] Under the Equal Protection Clause of the 14th Amendment, an interest in avoiding the bureaucratic effort necessary to tailor remedial relief to those who have truly suffered the effects of prior discrimination cannot justify a rigid line drawn on the basis of a suspect classification.[8]

Application of the more rigorous "strict scrutiny" test of a classification affecting a protected class is properly invoked only where the plaintiff can show intentional discrimination by the government.[9]

The searching review that is the hallmark of a strict scrutiny equal protection review is appropriate only in limited cases in which a statute classifies along inherently suspect lines or burdens the exercise of a fundamental constitutional right.[10] Discrimination is not shown merely because a state legislature has chosen not to subsidize the exercise of a fundamental right, and the strict scrutiny test does not apply in such situations.[11] The state bears a heavy burden of justification, and such statutes will be closely scrutinized in light of their asserted purposes.[12] Where a challenger asserting racial gerrymandering in violation of Equal Protection succeeds in establishing racial predominance in drawing electoral districts, the burden shifts to the state to demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.[13] Strict scrutiny under the Equal Protection Clause as applied to a public university's affirmative action admissions program requires the university to demonstrate with clarity that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose.[14]

Footnotes

1 Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986); Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980).

2 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995); Leib v. Hillsborough County Public Transp. Com'n, 558 F.3d 1301 (11th Cir. 2009); Lewis v. Ascension Parish School Bd., 996 F. Supp. 2d 450, 307 Ed. Law Rep. 59 (M.D. La. 2014); Coral Construction, Inc. v. City and County of San Francisco, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010); People v. Guyton, 2014 IL App (1st) 110450, 391 Ill. Dec. 424, 30 N.E.3d 1062 (App. Ct. 1st Dist. 2014); Doe v. Department of Public Safety and Correctional Services, 185 Md. App. 625, 971 A.2d 975 (2009); State v. Fowler, 197 N.C. App. 1, 676 S.E.2d 523 (2009).
As to freedom of speech and press, generally, see §§ 458 to 553.
As to race as a suspect classification, see §§ 881 to 883.

3 Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013) (further holding that the university must prove that means it has chosen to attain racial diversity are narrowly tailored to that goal).

4 Hamby v. Parnell, 56 F. Supp. 3d 1056 (D. Alaska 2014); State v. Pimentel, 461 N.J. Super. 468, 222 A.3d 345 (App. Div. 2019).

5 Wasatch Equality v. Alta Ski Lifts Co., 55 F. Supp. 3d 1351 (D. Utah 2014), aff'd, 820 F.3d 381 (10th Cir. 2016).

6 Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005); Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003); Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); Pyke v. Cuomo, 567 F.3d 74 (2d Cir. 2009); Wright v. Incline Village General Improvement Dist., 665 F.3d 1128 (9th Cir. 2011); Hamby v. Parnell, 56 F. Supp. 3d 1056 (D. Alaska 2014); Baskin v. Bogan, 12 F. Supp. 3d 1144 (S.D. Ind. 2014), aff'd, 766 F.3d 648 (7th Cir. 2014); United States v. Begani, 79 M.J. 767 (N.M.C.C.A. 2020); Blakeslee Arpaia Chapman, Inc. v. EI Constructors, Inc., 239 Conn. 708, 687 A.2d 506 (1997); In re Guardianship, Conservatorship of Durand, 859 N.W.2d 780 (Minn. 2015).
Where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997); Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).

7 Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005); Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003); Wright v. Incline Village General Improvement Dist., 665 F.3d 1128 (9th Cir. 2011); Hamby v. Parnell, 56 F. Supp. 3d 1056 (D. Alaska 2014);

Baskin v. Bogan, 12 F. Supp. 3d 1144 (S.D. Ind. 2014), aff'd, 766 F.3d 648 (7th Cir. 2014); In re Adoption/Guardianship No. 93321055/CAD, 344 Md. 458, 687 A.2d 681 (1997); In re Guardianship, Conservatorship of Durand, 859 N.W.2d 780 (Minn. 2015); Seeley v. State, 132 Wash. 2d 776, 940 P.2d 604 (1997); Board of County Com'rs v. Geringer, 941 P.2d 742 (Wyo. 1997).

8 City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989).

9 Wisconsin v. City of New York, 517 U.S. 1, 116 S. Ct. 1091, 134 L. Ed. 2d 167 (1996); Ricketts v. City of Hartford, 74 F.3d 1397, 43 Fed. R. Evid. Serv. 903 (2d Cir. 1996), as amended on reh'g in part, (Feb. 14, 1996); Johnson v. Rodriguez, 110 F.3d 299 (5th Cir. 1997); Horner v. Kentucky High School Athletic Ass'n, 43 F.3d 265, 96 Ed. Law Rep. 389, 1994 FED App. 0417P (6th Cir. 1994).

As to the prohibition against purposeful and intentional discrimination only, see § 828.

10 Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996).

Strict scrutiny of racial classification under Equal Protection Clause is searching examination, and government bears burden to prove that reasons for the classification are clearly identified and unquestionably legitimate. Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

11 Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983).

12 Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969); McLaughlin v. State of Fla., 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964).

Under the Equal Protection Clause, a state which adopts a suspect classification bears a heavy burden of justifying the classification by showing that its purpose or interest is both constitutionally permissible and substantial and that its use of the classification is necessary to the accomplishment of its purpose or the safeguarding of its interest. Application of Griffiths, 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973).

13 Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788, 197 L. Ed. 2d 85 (2017).

14 Fisher v. University of Texas at Austin, 136 S. Ct. 2198, 195 L. Ed. 2d 511, 333 Ed. Law Rep. 1 (2016).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 855. Fundamental rights in judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3062 to 3068

"Fundamental rights," the infringement of which is subject to heightened and strict scrutiny under the Equal Protection Clause, include only those basic liberties explicitly or implicitly guaranteed by the Federal Constitution.[1] Statutes affecting fundamental constitutional rights must be drawn with precision and must be tailored to serve their legitimate objectives; if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state must not choose the way of greater interference but must choose the less drastic means.[2]

In determining whether a particular state law impinges on a fundamental right or interest so as to be subject to strict judicial scrutiny under the Equal Protection Clause, particular human activities will not be picked out, characterized as "fundamental," and given added protection but, to the contrary, an established constitutional right will be recognized and given no less protection than the Constitution itself demands. Thus, under the Equal Protection Clause, any suspect classification which serves to penalize the exercise of a constitutional right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.[3] It is not the province of the United States Supreme Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws.[4] The social importance of the right or interest involved is not the critical determinant for subjecting legislation to strict judicial scrutiny under the Equal Protection Clause,[5] although, for equal protection purposes, the significant social costs borne by our nation when select groups are denied the means to absorb the values and

skills upon which our social order rests will not be ignored.[6] Similarly, the importance of a service performed by the state does not determine whether it must be regarded as fundamental for purposes of strict judicial examination under the Equal Protection Clause.[7]

Footnotes

1 Doe v. Town of Greenwich, 422 F. Supp. 3d 528 (D. Conn. 2019); Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996).

2 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); Maye v. Klee, 915 F.3d 1076 (6th Cir. 2019); Amos v. Higgins, 996 F. Supp. 2d 810 (W.D. Mo. 2014).

3 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

4 Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

5 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

6 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

7 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 856. Fundamental rights in judicial review of classifications—Particular rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3062 to 3068

Fundamental interests that must be protected by the stricter standards of reviewing classifications include:

• the right of procreation[1]

• the right to marry[2]

• the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and religious freedom[3]

• the right to interstate travel[4]

• the right to vote[5]

• liberty[6]

The following have been held not to be fundamental interests:

• bankruptcy[7]

• the right to an education[8]

• a certain quality of housing[9]

• free waste collection[10]

• farming[11]

• fishing, whether commercial or recreational[12]

• the right to pursue the livelihood or occupation of one's choosing[13]

• collective bargaining[14]

• governmental employment[15]

• jury service[16]

• participation in interscholastic athletics[17]

• individual weapon ownership or manufacture[18]

• land use regulation[19]

Footnotes

1 Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942).
A law burdening the fundamental right of reproductive choice demands strict scrutiny in an equal protection claim. State v. Planned Parenthood of the Great Northwest, 436 P.3d 984 (Alaska 2019).
As to the constitutional basis of the right to abortion and birth control, see Am. Jur. 2d, Abortion and Birth Control §§ 3 to 5.

2 Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618, 24 Fed. R. Serv. 2d 1313 (1978); Mapes v. U. S., 217 Ct. Cl. 115, 576 F.2d 896 (1978); Voichahoske v. City of Grand Island, Hall County, 194 Neb. 175, 231 N.W.2d 124 (1975).
As to the right of same-sex couples to marry, see § 886.
As to governmental regulation of marriage, see Am. Jur. 2d, Marriage §§ 11 to 14.

3 Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); Rocket Learning, Inc. v. Rivera-Sanchez, 715 F.3d 1 (1st Cir. 2013); Maye v. Klee, 915 F.3d 1076 (6th Cir. 2019); State v. Young, 362 S.W.3d 386 (Mo. 2012).
The government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity. Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).
As to First Amendment rights, generally, see §§ 416 to 606.

4 Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (2d Cir. 1971); Wellford v. Battaglia, 485 F.2d 1151 (3d Cir. 1973).

As to freedom of travel, generally, see §§ 657 to 665.

5 Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); Hill v. Stone, 421 U.S. 289, 95 S. Ct. 1637, 44 L. Ed. 2d 172 (1975); Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974); Libertarian Party of Ohio v. Husted, 2017-Ohio-7737, 97 N.E.3d 1083 (Ohio Ct. App. 10th Dist. Franklin County 2017).

As to constitutional protection of the right to vote, generally, see Am. Jur. 2d, Elections §§ 99 to 101.

6 In re Mental Commitment of Mary F.-R., 2013 WI 92, 351 Wis. 2d 273, 839 N.W.2d 581 (2013).

7 U.S. v. Kras, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).

8 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); St. Joan Antida High School Inc. v. Milwaukee Public School District, 919 F.3d 1003, 364 Ed. Law Rep. 24 (7th Cir. 2019); ASAH v. New Jersey Department of Education, 330 F. Supp. 3d 975, 359 Ed. Law Rep. 400 (D.N.J. 2018); Collins v. Thurmond, 41 Cal. App. 5th 879, 258 Cal. Rptr. 3d 830 (5th Dist. 2019), review denied, (Feb. 26, 2020).

Aside from outright exclusion, the Supreme Court deciding equal protection claims continues to employ a rational basis review for classifications that burden the educational opportunities of a nonsuspect class. Toledo v. Sanchez, 454 F.3d 24, 211 Ed. Law Rep. 25 (1st Cir. 2006).

As to education as a governmental function, see Am. Jur. 2d, Schools §§ 6 to 10.

As to the right to attend school, generally, see Am. Jur. 2d, Schools §§ 255 to 265.

9 Citizens Committee for Faraday Wood v. Lindsay, 507 F.2d 1065 (2d Cir. 1974).

As to housing laws, generally, see Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 to 32.

10 Beauclerc Lakes Condominium Ass'n v. City of Jacksonville, 115 F.3d 934 (11th Cir. 1997).

11 U.S. v. White Plume, 447 F.3d 1067 (8th Cir. 2006).

12 Vickers v. Egbert, 359 F. Supp. 2d 1358 (S.D. Fla. 2005).

13 Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005) (abrogated on other grounds by, Bond v. U.S., 564 U.S. 211, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011)); LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005); Whittle v. U.S., 7 F.3d 1259 (6th Cir. 1993); In re Kaitangian, 218 B.R. 102 (Bankr. S.D. Cal. 1998); Stanton-Negley Drug Co. v. Department of Public Welfare, 943 A.2d 377 (Pa. Commw. Ct. 2008).

14 University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO v. Edgar, 114 F.3d 665, 118 Ed. Law Rep. 599 (7th Cir. 1997).

15 Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); McCool v. City of Philadelphia, 494 F. Supp. 2d 307 (E.D. Pa. 2007).

No one has a constitutional right to be a public employee. Slochower v. Board of Higher Ed. of City of New York, 350 U.S. 551, 76 S. Ct. 637, 100 L. Ed. 692 (1956).

As to the basis of and rights to public office or employment, generally, see Am. Jur. 2d, Public Officers and Employees §§ 10 to 13.

16 Adams v. Superior Court, 12 Cal. 3d 55, 115 Cal. Rptr. 247, 524 P.2d 375 (1974).

As to jury service, generally, see Am. Jur. 2d, Jury §§ 92 to 191.

17 Christian Bros. Institute of New Jersey v. Northern New Jersey Interscholastic League, 86 N.J. 409, 432 A.2d 26 (1981).

18 Olympic Arms, et al. v. Buckles, 301 F.3d 384, 2002 FED App. 0264P (6th Cir. 2002).

19 Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015).

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Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 857. Suspect classes in judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3069 to 3082

In determining whether a class is strictly suspect and, thus, is entitled to have applied to it the strict scrutiny test, a court traditionally looks for an indication that the class is saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.[1] The underlying rationale of the "suspect classification" theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down.[2] Judicial decisions have rejected administrative ease and convenience as sufficiently important objectives to justify suspect classifications.[3]

Footnotes

1 Mathews v. Lucas, 427 U.S. 495, 96 S. Ct. 2755, 49 L. Ed. 2d 651 (1976); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Bassett v. Snyder, 951 F. Supp. 2d 939 (E.D. Mich. 2013).

2 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

3 Craig v. Boren, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976); Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973).

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16B Am. Jur. 2d Constitutional Law § 858

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 858. Suspect classes in judicial review of classifications —Specific classifications deserving strict scrutiny

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3069 to 3082

Suspect classifications deserving of strict scrutiny include those based on race[1] or national origin,[2] religion,[3] alienage,[4] nonresidency (at least in some instances),[5] and wealth,[6] although the United States Supreme Court has never invoked the stricter standard for reviewing classifications based on wealth unless such classifications deprived persons of fundamental rights.[7]

Footnotes

1 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003); Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999); Pyke v. Cuomo, 567 F.3d 74 (2d Cir. 2009); Leib v. Hillsborough County Public Transp. Com'n, 558 F.3d 1301 (11th Cir. 2009); Sanchez v. City of Fresno, 914 F. Supp. 2d 1079 (E.D. Cal. 2012); Pedersen v. Office of Personnel Management, 881 F. Supp. 2d 294 (D. Conn. 2012); Lot 04B & 5C, Block 83 Townsite v. Fairbanks North Star Borough, 208 P.3d 188 (Alaska 2009); People v. Mora, 214 Cal. App. 4th 1477, 154 Cal. Rptr. 3d 837 (4th Dist. 2013); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 (N.M. 2013); State v. Hirschfelder, 170 Wash. 2d 536, 242 P.3d 876 (2010).

2 Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971); Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969); Sanchez v. City of Fresno, 914 F. Supp. 2d 1079 (E.D. Cal. 2012); Pedersen v. Office of Personnel Management, 881 F. Supp. 2d 294 (D. Conn. 2012); People v. Mora, 214 Cal. App. 4th 1477, 154 Cal. Rptr. 3d 837 (4th Dist. 2013); Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 (N.M. 2013); State v. Hirschfelder, 170 Wash. 2d 536, 242 P.3d 876 (2010).

Hispanics constitute an identifiable class for purposes of the 14th Amendment. Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 548 (1973).

Any official action that treats a person differently on account of the person's race or ethnic origin is inherently suspect. Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

As to classification on the basis of race, color, or nationality, generally, see §§ 881 to 883.

3 City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976); Pedersen v. Office of Personnel Management, 881 F. Supp. 2d 294 (D. Conn. 2012).

As to classification on the basis of religion, generally, see § 884.

4 Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984); Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 (N.M. 2013); State v. Hirschfelder, 170 Wash. 2d 536, 242 P.3d 876 (2010).

As to classifications based on alienage employed by a state as subject to strict judicial scrutiny, generally, see Am. Jur. 2d, Aliens and Citizens § 1839.

5 Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).

As to classification based on residency, see § 894.

6 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Douglas v. People of State of Cal., 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963).

7 Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997).

As to classification on the basis of wealth, generally, see § 896.

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 859. Quasi-suspect classes in judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3069 to 3082

Groups entitled to an intermediate level of scrutiny are often called "quasi-suspect groups."[1] Classes formed on the basis of gender or illegitimacy are quasi-suspect.[2] Alcoholics are not a quasi-suspect class for purposes of equal protection analysis.[3] Drug users are not a suspect or a quasi-suspect class for purposes of equal protection analysis.[4] In addition, vegetarians are not a quasi-suspect class.[5]

People with disabilities do not constitute a suspect, or quasi-suspect, class; accordingly, the Equal Protection Clause does not require trial courts to make special accommodations for prospective jurors with disabilities, so long as their actions toward such individuals are rational.[6] Sex offenders, compulsive and repetitive or otherwise, are neither suspect nor quasi-suspect classes under the Equal Protection Clause.[7]

Footnotes

1 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).
As to the intermediate scrutiny test, see § 853.

2 Sanchez v. City of Fresno, 914 F. Supp. 2d 1079 (E.D. Cal. 2012); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

3 Mitchell v. Commissioner of the Social Sec. Admin., 182 F.3d 272 (4th Cir. 1999).

4 Commonwealth v. Becker, 2017 PA Super 317, 172 A.3d 35 (2017).

5 Jackson v. Gordon, 145 Fed. Appx. 774 (3d Cir. 2005).

6 Trotman v. State, 466 Md. 237, 218 A.3d 265 (2019).

7 L.A. v. Hoffman, 144 F. Supp. 3d 649 (D.N.J. 2015).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

a. In General

(2) Review

§ 860. Classes that are not suspect in judicial review of classifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3069 to 3082

A.L.R. Library

Validity, Construction, and Application of State Statutes Limiting or Conditioning Receipt of Government Funds by Abortion Providers, 26 A.L.R.7th Art. 9

Validity Of State Statutes And Regulations Limiting or Restricting Public Funding for Abortions Sought By Indigent Women, 118 A.L.R.5th 463

Classes consisting of handicapped or disabled children[1] or indigent women desiring abortions,[2] as such, do not constitute "suspect classifications." The following are not suspect classes:

• the disabled[3]

• school district employees[4]

• hospitals, licensed health care facilities, and medical practitioners that provided abortions[5]

• corporations[6]

• drug users[7]

• parents of unborn children[8]

• single parents of minor children[9]

• indigents[10]

• casino dealers[11]

• strikers[12]

• condominium owners[13]

• state employees[14]

• fishermen, whether commercial or recreational[15]

• persons charged with driving under the influence[16]

• prisoners[17]

• vegetarians[18]

• sex offenders[19]

• alcoholics[20]

• gun retailers and owners[21]

Statutes dealing with the following do not involve any suspect classification:

• no-fault insurance[22]

• enhancing the penalty for murder of a peace officer[23]

• pregnancy[24]

• criminal records[25]

• status as veterans[26]

• population or geographical area or size[27]

• conscientious objection[28]

• homosexuality[29]

• age[30]

Caution:

Speaking a particular language, by itself, does not identify members of a suspect class.[31] Furthermore, a state statute requiring that all instruction in subjects except foreign languages be done in English is not necessarily invidious since the policy of school authorities that it is in the best interest of all students to learn to function in English since our society is predominantly English speaking is rationally based. Although the policy does have its main impact on students whose main language is Spanish, it is precisely these individuals who might benefit the most from such a rule.[32]

Footnotes

1 Matter of Levy, 38 N.Y.2d 653, 382 N.Y.S.2d 13, 345 N.E.2d 556 (1976).
As to classification based on mental or physical disability, see §§ 892, 893.

2 Poelker v. Doe, 432 U.S. 519, 97 S. Ct. 2391, 53 L. Ed. 2d 528 (1977); Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977); Beal v. Doe, 432 U.S. 438, 97 S. Ct. 2366, 53 L. Ed. 2d 464 (1977).
As to public funding of abortion or use of public facilities or employees, generally, see Am. Jur. 2d, Abortion and Birth Control §§ 46 to 53.

3 Toledo v. Sanchez, 454 F.3d 24, 211 Ed. Law Rep. 25 (1st Cir. 2006).

4 Butts v. Aultman, 953 F.3d 353 (5th Cir. 2020).

5 Planned Parenthood of the Great Northwest and the Hawaiian Islands v. Wasden, 350 F. Supp. 3d 925 (D. Idaho 2018), injunction pending appeal denied, 2018 WL 5905059 (D. Idaho 2018) and appeal dismissed, 2019 WL 5681522 (9th Cir. 2019).

6 1A Auto, Inc. v. Director of Office of Campaign and Political Finance, 480 Mass. 423, 105 N.E.3d 1175 (2018), cert. denied, 139 S. Ct. 2613, 204 L. Ed. 2d 263 (2019).

7 Commonwealth v. Becker, 2017 PA Super 317, 172 A.3d 35 (2017).

8 Reyna v. City and County of San Francisco, 69 Cal. App. 3d 876, 138 Cal. Rptr. 504 (1st Dist. 1977).

9 Lindenau v. Alexander, 663 F.2d 68 (10th Cir. 1981).

10 Hassan v. Wright, 45 F.3d 1063 (7th Cir. 1995).

11 Allen v. U.S. Government Dept. of Treasury, 976 F.2d 975 (5th Cir. 1992).

12 Lyng v. International Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW, 485 U.S. 360, 108 S. Ct. 1184, 99 L. Ed. 2d 380 (1988).

13 Beauclerc Lakes Condominium Ass'n v. City of Jacksonville, 115 F.3d 934 (11th Cir. 1997).

14 Boshears v. Arkansas Racing Commission, 258 Ark. 741, 528 S.W.2d 646 (1975).

15 Vickers v. Egbert, 359 F. Supp. 2d 1358 (S.D. Fla. 2005).

16 State v. Bodden, 877 So. 2d 680 (Fla. 2004).

17 Johnson v. Daley, 339 F.3d 582 (7th Cir. 2003); Lilly v. State, 337 S.W.3d 373 (Tex. App. Eastland 2011), petition for discretionary review granted, (June 29, 2011) and judgment rev'd on other grounds, 365 S.W.3d 321 (Tex. Crim. App. 2012).

18 Jackson v. Gordon, 145 Fed. Appx. 774 (3d Cir. 2005).

19 Wolff v. Hood, 242 F. Supp. 2d 811 (D. Or. 2002); State v. Avelar, 129 Idaho 700, 931 P.2d 1218 (1997).

20 Mitchell v. Commissioner of the Social Sec. Admin., 182 F.3d 272 (4th Cir. 1999).

21 Olympic Arms, et al. v. Buckles, 301 F.3d 384, 2002 FED App. 0264P (6th Cir. 2002).

22 Montgomery v. Daniels, 38 N.Y.2d 41, 378 N.Y.S.2d 1, 340 N.E.2d 444 (1975).

23 Barnes v. State, 263 Ind. 320, 330 N.E.2d 743 (1975).

24 General Elec. Co. v. Gilbert, 429 U.S. 125, 97 S. Ct. 401, 50 L. Ed. 2d 343 (1976).

25 Hyland v. Fukuda, 402 F. Supp. 84 (D. Haw. 1975), judgment rev'd on other grounds, 580 F.2d 977 (9th Cir. 1978); U.S. v. Brookins, 383 F. Supp. 1212 (D.N.J. 1974), aff'd, 524 F.2d 1404 (3d Cir. 1975).

26 Cleland v. National College of Business, 435 U.S. 213, 98 S. Ct. 1024, 55 L. Ed. 2d 225 (1978).

27 U.S. ex rel. Womack v. U.S. Atty. for Northern Dist. of Ill., 348 F. Supp. 1331 (N.D. Ill. 1972); Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 311 F. Supp. 1002 (E.D. Pa. 1970), judgment aff'd, 442 F.2d 159 (3d Cir. 1971); Mitchell v. Mobile County, 294 Ala. 130, 313 So. 2d 172 (1975); Bills v. State, 1978 OK CR 112, 585 P.2d 1366 (Okla. Crim. App. 1978).

28 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

29 §§ 885 to 887.

However, some state courts applying state equal protection provisions have held otherwise. §§ 885 to 887.

30 Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Ahlmeyer v. Nevada System of Higher Educ., 555 F.3d 1051, 241 Ed. Law Rep. 545 (9th Cir. 2009); Merrill v. Utah Labor Com'n, 2009 UT 26, 223 P.3d 1089 (Utah 2009), on reh'g, 2009 UT 74, 223 P.3d 1099 (Utah 2009).

Age is not a suspect classification under the Equal Protection Clause. Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

As to age as a classification, see § 888.

As to age discrimination, generally, see Am. Jur. 2d, Civil Rights § 378.

31 Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir. 1983).

32 U.S. v. Gregory-Portland Independent School Dist., 654 F.2d 989 (5th Cir. 1981).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 861. Reasonableness of classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3053

The Equal Protection Clause does not forbid classification; it simply keeps governmental decision makers from treating differently persons who are in all relevant respects alike.[1] Thus, the mere fact of classification is not sufficient to relieve a statute from the reach of the Equal Protection Clause.[2] One of the essential requirements as to classification, in order that it may not violate the constitutional guarantee as to equal protection of the laws, is that the classification must not be capricious or arbitrary[3] but must be reasonable[4] and natural[5] and must have a rational basis[6] in the light of its purpose or objective.[7] The Equal Protection Clause requires that a classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.[8]

It is frequently difficult to determine whether a particular classification is reasonable or unreasonable,[9] and no definite rule has or can be laid down whereby this may be determined.[10] The determination must be made in accordance with the facts presented by each particular case.[11] The test of reasonableness of a legislative classification is the good faith of the legislature making it.[12] A classification is reasonable, for purposes of rational basis equal protection review, if it is based upon some apparent difference in the situation or circumstances of the subjects placed within one class or the other which establishes the necessity or propriety of a distinction between them.[13] Discrimination of an unusual character especially suggests careful consideration to determine whether it is obnoxious to the constitutional provision.[14] Under the traditional standard of judicial review, a statutory

classification must bear some rational relationship to a legitimate state interest,[15] and the latitude given state economic and social regulation is necessarily broad;[16] however, when state statutory classifications approach sensitive and fundamental rights, the courts will exercise a strict scrutiny for equal protection purposes.[17] Applying rational basis review under the Equal Protection Clause of the Fourteenth Amendment, a classification is accorded a strong presumption of validity and must be upheld if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.[18]

Footnotes

1 Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); Nicholas v. Tucker, 114 F.3d 17 (2d Cir. 1997); Penrod v. Zavaras, 94 F.3d 1399 (10th Cir. 1996); Inniss v. Aderhold, 80 F. Supp. 3d 1335 (N.D. Ga. 2015); Hamich, Inc. v. State By and Through Clayburgh, 1997 ND 110, 564 N.W.2d 640 (N.D. 1997).
The Equal Protection Clause prohibits the government from treating similarly situated persons differently. Buchanan v. City of Bolivar, Tenn., 99 F.3d 1352, 114 Ed. Law Rep. 25, 1996 FED App. 0352P (6th Cir. 1996); Keevan v. Smith, 100 F.3d 644 (8th Cir. 1996); Patel v. Penman, 103 F.3d 868 (9th Cir. 1996).

2 § 845.

3 § 862.

4 Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979); People v. Travis, 139 Cal. App. 4th 1271, 44 Cal. Rptr. 3d 177 (1st Dist. 2006); Injured Workers of Kansas v. Franklin, 262 Kan. 840, 942 P.2d 591 (1997); Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996); Davis v. Union Pacific R. Co., 282 Mont. 233, 937 P.2d 27 (1997); Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996); Theisen v. Theisen, 382 S.C. 213, 676 S.E.2d 133 (2009).
At the minimum level of equal protection analysis, it is required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives. Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).

5 Dribin v. Superior Court In and For Los Angeles County, 37 Cal. 2d 345, 231 P.2d 809, 24 A.L.R.2d 864 (1951); Murphy v. Commissioner of Human Services, 765 N.W.2d 100 (Minn. Ct. App. 2009).
It suffices if the classification is practical. State v. Trantham, 230 N.C. 641, 55 S.E.2d 198 (1949).

6 Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974); James v. Strange, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed. 2d 600 (1972); Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996); State v. Jagger, 149 Wash. App. 525, 204 P.3d 267 (Div. 2 2009).
Although wide leeway is allowed the states by the 14th Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto admits of no settled formula, distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to pursuit of that goal. McDonald v. Board of Election Com'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969).

7 Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675 (1965).
The "reasonableness" of a statutory classification is dependent upon the purpose of the act. Kinney v. Kaiser-Aluminum & Chemical Corp., 41 Ohio St. 2d 120, 70 Ohio Op. 2d 206, 322 N.E.2d 880 (1975).

8 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997).

9 Seaboard Air Line Ry. v. Seegers, 207 U.S. 73, 28 S. Ct. 28, 52 L. Ed. 108 (1907); Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 2 Ohio Op. 2d 169, 142 N.E.2d 525 (1957).

10 Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 2 Ohio Op. 2d 169, 142 N.E.2d 525 (1957).
As to court review of classifications, see §§ 847 to 854.

11 Griffin v. County School Bd. of Prince Edward County, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964); Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 2 Ohio Op. 2d 169, 142 N.E.2d 525 (1957).

12 Dickinson v. Porter, 240 Iowa 393, 35 N.W.2d 66 (1948).

As to legislative power and discretion respecting classification, generally, see § 846.

13 State v. Dudley, 766 N.W.2d 606 (Iowa 2009).

14 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996).

15 Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); People v. Alexander, 45 Cal. App. 5th 341, 258 Cal. Rptr. 3d 665 (2d Dist. 2020).

16 § 852.

17 § 854.

18 Medina Tovar v. Zuchowski, 950 F.3d 581 (9th Cir. 2020).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 862. Reasonableness of classification—Prohibition of legislation which is arbitrary, capricious, and the like

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3054

Corollary to the rule that a legislative classification must be reasonable if it is to comport with the equal protection guarantee is the firmly established principle that a classification which is arbitrary or capricious[1] fatally conflicts with that guarantee.[2] A classification must be reasonable, not arbitrary.[3] Arbitrary and irrational discrimination violates the Equal Protection Clause even under the most deferential standard of review.[4] Any discrimination is invalid if it is purely arbitrary, oppressive, or capricious and made to depend on differences of color, race, nativity, religious opinions, political affiliations, or other considerations having no proper connection with the object sought by the legislation.[5] However, the fact that a statute discriminates in favor of certain classes does not make it arbitrary if the discrimination is founded upon a reasonable distinction or if any state of facts reasonably can be conceived to sustain it.[6] The Equal Protection Clause is offended only if the statute's classification rests on grounds wholly irrelevant to the achievement of the state's objective.[7] Arbitrary selection for special statutory burdens can never be justified under the Equal Protection Clause by calling it classification.[8] The Constitution's guarantee of equality must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group.[9]

Under rational basis review, the plaintiff must prove that the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious under the Equal Protection Clause; the plaintiff must negate every reasonable basis upon which the classification may be sustained.[10]

Observation:

The Commerce Clause, unlike the Equal Protection Clause, is integrally concerned with whether a state purpose implicates local or national interests; the Equal Protection Clause, in contrast, is concerned with whether a state purpose is permissibly discriminatory and, thus, whether such discrimination involves a local or other interest is not central to the inquiry to be made.[11]

Footnotes

1 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); Murphy v. Commissioner of Dept. of Indus. Accidents, 415 Mass. 218, 612 N.E.2d 1149 (1993).

2 Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, 82 Ohio L. Abs. 312 (1959); Mackenzie v. City of Rockledge, 920 F.2d 1554 (11th Cir. 1991) (holding that to overcome an equal protection challenge, the distinctions between similarly situated persons must be reasonable, not arbitrary, and substantially related to the object of the legislation); Doe v. Poritz, 142 N.J. 1, 662 A.2d 367, 36 A.L.R.5th 711 (1995).

The Equal Protection Clause does not only protect "fundamental rights" and does not only protect against "suspect classifications" such as race, but rather it also protects citizens from arbitrary or irrational state action. Batra v. Board of Regents of University of Nebraska, 79 F.3d 717, 108 Ed. Law Rep. 48 (8th Cir. 1996).

3 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971).

4 Bankers Life and Cas. Co. v. Crenshaw, 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988); U.S. v. Presley, 52 F.3d 64 (4th Cir. 1995); Bishop v. U.S. ex rel. Holder, 962 F. Supp. 2d 1252 (N.D. Okla. 2014), aff'd on other grounds, 760 F.3d 1070 (10th Cir. 2014).

5 American Sugar-Refining Co. v. State of Louisiana, 179 U.S. 89, 21 S. Ct. 43, 45 L. Ed. 102 (1900).

A municipal disorderly conduct ordinance which prohibits picketing or demonstrating on a public way within 150 feet of any primary or secondary school building, from 30 minutes before school is in session until 30 minutes after school has been concluded, "provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute," is unconstitutional because it makes an impermissible distinction between labor picketing and other peaceful picketing. Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972); Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

6 New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Lighthouse Shores, Inc. v. Town of Islip, 41 N.Y.2d 7, 390 N.Y.S.2d 827, 359 N.E.2d 337 (1976).

7 Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S. Ct. 383, 58 L. Ed. 2d 292, 26 Fed. R. Serv. 2d 635 (1978); Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996).

8 Barletta v. Rilling, 973 F. Supp. 2d 132 (D. Conn. 2013).

9 U.S. v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

10 State v. Doe, 927 N.W.2d 656 (Iowa 2019), cert. denied, 140 S. Ct. 561, 205 L. Ed. 2d 356 (2019).

11 Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985).

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16B Am. Jur. 2d Constitutional Law § 863

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Constitutional Law
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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 863. Material and substantial differences in regulated and unregulated classes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3034, 3035, 3054

The 14th Amendment, in requiring equal protection of the laws, is not to be construed as introducing a factitious equality without regard to the practical differences that are best met by corresponding differences of treatment.[1] Generally speaking, it is competent for a legislature to determine upon what differences a distinction may be made for the purpose of statutory classification between objects otherwise having resemblances, although, of course, such power cannot be exercised arbitrarily and the distinction made must have some reasonable basis.[2] The general rule is well settled that a classification, to be valid, must rest upon material differences between the persons, activities, or things included in it and those excluded; furthermore, it must be based upon substantial distinctions.[3] As the rule has sometimes been stated, the classification must, in order to avoid the constitutional prohibition, be founded upon pertinent and real differences as distinguished from irrelevant and artificial ones.[4] The legislature cannot take what might be termed "a natural class of persons," split that class in two, and then arbitrarily designate the dissevered factions of the original unit as two classes and thereupon enact different rules for the government of each.[5] By the same token, while a statutory discrimination between two like classes cannot be rationalized by assigning different labels to them, neither can two unlike classes be made indistinguishable by attaching a common label to them.[6] Any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply[7] and must rest on some reason on which it can be defended.[8]

The reason for a classification must inhere in the subject matter, must be natural and substantial,[9] and must be one suggested by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them.[10] However, the difference between the subjects of a legislative classification need not be great, and if any reasonable distinction between the subjects as a basis for the classification can be found, the classification should be sustained; a "narrow" distinction will suffice.[11] A common characteristic shared by beneficiaries and nonbeneficiaries alike is not sufficient to invalidate a statute as violative of equal protection requirements when other characteristics peculiar to only one group rationally explain the statute's discriminatory treatment of the two groups.[12]

Footnotes

1 Graham v. State of West Virginia, 224 U.S. 616, 32 S. Ct. 583, 56 L. Ed. 917 (1912); Standard Oil Co. of Kentucky v. State of Tennessee ex rel. Cates, 217 U.S. 413, 30 S. Ct. 543, 54 L. Ed. 817 (1910).
As to equality of operation, see § 830.

2 International Harvester Co. v. State of Missouri ex inf. Attorney General, 234 U.S. 199, 34 S. Ct. 859, 58 L. Ed. 1276 (1914); Missouri, K. & T. Ry. Co. of Texas v. Cade, 233 U.S. 642, 34 S. Ct. 678, 58 L. Ed. 1135 (1914); Rosenthal v. People of State of New York, 226 U.S. 260, 33 S. Ct. 27, 57 L. Ed. 212 (1912); Murphy v. People of State of California, 225 U.S. 623, 32 S. Ct. 697, 56 L. Ed. 1229 (1912); Fifth Ave. Coach Co. v. City of New York, 221 U.S. 467, 31 S. Ct. 709, 55 L. Ed. 815 (1911).
As to the discretion of the legislature in classification, see § 846.

3 Old Dearborn Distributing Co. v. Seagram-Distillers Corporation, 299 U.S. 183, 57 S. Ct. 139, 81 L. Ed. 109, 106 A.L.R. 1476 (1936); Nebbia v. People of New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A.L.R. 1469 (1934); Schrey v. Allison Steel Mfg. Co., 75 Ariz. 282, 255 P.2d 604 (1953); Krebs v. Board of Trustees of Teachers' Retirement System, 410 Ill. 435, 102 N.E.2d 321, 27 A.L.R.2d 1434 (1951); City of St. Paul v. Dalsin, 245 Minn. 325, 71 N.W.2d 855 (1955); Walker v. Board of Supervisors of Monroe County, 224 Miss. 801, 81 So. 2d 225 (1955); State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943); State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co., 79 N.D. 471, 58 N.W.2d 76 (1953); Kinney v. Kaiser-Aluminum & Chemical Corp., 41 Ohio St. 2d 120, 70 Ohio Op. 2d 206, 322 N.E.2d 880 (1975).

4 Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); Walters v. City of St. Louis, Mo., 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954); Clifton v. Allegheny County, 600 Pa. 662, 969 A.2d 1197 (2009); Browndale Intern. Ltd. v. Board of Adjustment for Dane County, 60 Wis. 2d 182, 208 N.W.2d 121 (1973).
The Equal Protection Clause requires that in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made. Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966).

5 Schoo v. Rose, 270 S.W.2d 940 (Ky. 1954).

6 Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971).

7 Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A.2d 177, 156 A.L.R. 568 (1944).

8 Walker v. Board of Supervisors of Monroe County, 224 Miss. 801, 81 So. 2d 225 (1955).

9 State v. Evans, 73 Idaho 50, 245 P.2d 788 (1952); Bolivar Tp. Board of Finance of Benton County v. Hawkins, 207 Ind. 171, 191 N.E. 158, 96 A.L.R. 271 (1934).

10 Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977); Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971); Goldstein v. City of Chicago, 504 F.2d 989 (7th Cir. 1974); Mosgrove v. Town of Federal Heights, 190 Colo. 1, 543 P.2d 715 (1975).

11 Barry v. Barchi, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979); Anderson v. City of St. Paul, 226 Minn. 186, 32 N.W.2d 538 (1948); State ex rel. Burton v. Greater Portsmouth Growth Corp., 7 Ohio St. 2d 34, 36 Ohio Op. 2d 19, 218 N.E.2d 446 (1966).

12 Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

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16B Am. Jur. 2d Constitutional Law § 864

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 864. Material and substantial differences in regulated and unregulated classes—Relationship between differences and objectives of classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3034, 3035, 3054

The objects and purposes of a law present the touchstone for determining proper and improper classifications,[1] and a classification to be valid must always rest on a difference which bears a fair, substantial, natural, reasonable, and just relationship to the object for which it is proposed.[2] The classification must be based upon proper and justifiable distinctions, considering the purpose of the law.[3] A classification must be based on substantial distinctions which make real differences and are germane and pertinent to the purposes of the law;[4] and while the legislature may make a reasonable classification of persons, corporations, and property for purposes of legislation concerning them, the classification must rest upon real differences of situation and circumstances surrounding the members of the class, relative to the subject of legislation, which render appropriate its enactment.[5] Where the reason for a classification inheres in the subject matter and the classification is natural and substantial and bears a reasonable relationship to the evil sought to be controlled, it is valid.[6] However, where the class singled out by the legislature in a statute has no necessary connection with the evil sought to be prevented, and where that evil can be directly prevented through nondiscriminatory legislation, the statute must be struck down as an invidious discrimination against that class.[7]

Although the Equal Protection Clause does not deny to states the power to treat different classes of persons in different ways, nevertheless the Equal Protection Clause denies to states the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute.[8]

Footnotes

1 Gronlund v. Salt Lake City, 113 Utah 284, 194 P.2d 464 (1948).

2 Baxstrom v. Herold, 383 U.S. 107, 86 S. Ct. 760, 15 L. Ed. 2d 620 (1966); Walters v. City of St. Louis, Mo., 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954); Burch v. Foy, 1957-NMSC-017, 62 N.M. 219, 308 P.2d 199 (1957).

3 State v. Double Seven Corp., 70 Ariz. 287, 219 P.2d 776, 19 A.L.R.2d 1007 (1950); Dribin v. Superior Court In and For Los Angeles County, 37 Cal. 2d 345, 231 P.2d 809, 24 A.L.R.2d 864 (1951); State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).
The constitutional safeguard is offended if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).

4 McErlain v. Taylor, 207 Ind. 240, 192 N.E. 260, 94 A.L.R. 1284 (1934); Woolf v. Fuller, 87 N.H. 64, 174 A. 193, 94 A.L.R. 1067 (1934); State ex rel. Ford Hopkins Co. v. Mayor and Common Council of City of Watertown, 226 Wis. 215, 276 N.W. 311 (1937).
The ultimate test of validity is not whether the classes differ, but whether the differences between them are pertinent to the subject with respect to which the classification is made. Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).

5 Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124 (1952); Blauvelt v. Beck, 162 Neb. 576, 76 N.W.2d 738 (1956).

6 McWhorter v. Commonwealth, 191 Va. 857, 63 S.E.2d 20 (1951).

7 Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 95 Cal. Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351 (1971).

8 Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 865. Application of law to all members of regulated class

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3055

A fundamental principle involved in classification is that it must meet the requirement that a law shall affect alike all persons in the same class and under similar conditions.[1] Generally, laws that apply evenhandedly to all unquestionably comply with the Equal Protection Clause.[2] If a classification in legislation meets the prerequisites indispensable to the establishment of a class that it be reasonable and not arbitrary[3] and be based upon substantial distinctions with a proper relation to the objects classified and the purposes sought to be achieved,[4] as long as the law operates alike on all members of the class, which includes all persons and property similarly situated, it is not subject to any objections that it is special or class legislation[5] and is not a violation of the federal guarantee of the equal protection of the laws.[6]

The Equal Protection Clause does not preclude a legislative classification made for the purpose of applying a statute, not to the group classified, but to everyone except that group.[7] The generality of an act does not depend on the number within the class it purports to regulate or the number without that class; it is general and not unconstitutional when it applies uniform rules of conduct for all those coming within the scope of its application, and it may not be challenged for denial of equal protection to those on whom it operates because others differently situated may not be affected by its terms.[8] Nor is equal protection denied merely because, at one time one individual is not included within the class regulated, while at another time another individual similarly situated is included within that class, where there is no discrimination among persons in a similar situation at any given period.[9]

There must always be uniformity within the class. If persons under the same circumstances and conditions are treated differently, there is arbitrary discrimination and not classification.[10] The 14th Amendment does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate but merely requires that all persons subjected to such legislation shall be treated alike, under similar circumstances and conditions, both in the privileges conferred and in the liabilities imposed.[11]

There are two remedial alternatives when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit: a court may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion.[12] The choice between the two alternative remedial outcomes that are possible when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit, namely extension of benefits or nullification, is governed by the legislature's intent, as revealed by the statute at hand.[13] Ordinarily, extension of benefits, rather than nullification, is the proper course when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit.[14]

Laws narrow in scope, including "class of one" legislation, may violate the Equal Protection Clause if arbitrary or inadequately justified.[15]

Footnotes

1 Grant Medical Center v. Burwell, 204 F. Supp. 3d 68 (D.D.C. 2016), aff'd, 875 F.3d 701 (D.C. Cir. 2017); Champlin Refining Co. v. Cruse, 115 Colo. 329, 173 P.2d 213 (1946); City of St. Paul v. Dalsin, 245 Minn. 325, 71 N.W.2d 855 (1955); Lane Distributors v. Tilton, 7 N.J. 349, 81 A.2d 786 (1951); State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co., 79 N.D. 471, 58 N.W.2d 76 (1953); Porter v. City of Oberlin, 1 Ohio St. 2d 143, 30 Ohio Op. 2d 491, 205 N.E.2d 363 (1965); Met v. State, 2016 UT 51, 388 P.3d 447 (Utah 2016); Madison Metropolitan Sewerage Dist. v. Committee on Water Pollution, 260 Wis. 229, 50 N.W.2d 424 (1951).

2 Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997).

3 §§ 861, 862.

4 §§ 863, 864.

5 Smith v. Hill, 12 Ill. 2d 588, 147 N.E.2d 321, 73 A.L.R.2d 540 (1958); Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951); McMullin v. Richmond City Council, 312 Ky. 430, 227 S.W.2d 975 (1950).

6 Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); State v. Evans, 73 Idaho 50, 245 P.2d 788 (1952); McMullin v. Richmond City Council, 312 Ky. 430, 227 S.W.2d 975 (1950); Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co., 149 Neb. 507, 31 N.W.2d 477 (1948), aff'd, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).

7 Werner v. Southern Cal. Associated Newspapers, 35 Cal. 2d 121, 216 P.2d 825, 13 A.L.R.2d 252 (1950).

8 People v. Sullivan, 60 Cal. App. 2d 539, 141 P.2d 230 (4th Dist. 1943).

9 Koster v. Holz, 3 N.Y.2d 639, 171 N.Y.S.2d 65, 148 N.E.2d 287 (1958).

10 State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943); State v. Glidden Co., 228 N.C. 664, 46 S.E.2d 860 (1948).

11 Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997); Sacharoff v. Corsi, 294 N.Y. 305, 62 N.E.2d 81 (1945); Cavalier Vending Corp. v. State Bd. of Pharmacy, 195 Va. 626, 79 S.E.2d 636 (1954).

12 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

13 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

14 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

15 Bank Markazi v. Peterson, 136 S. Ct. 1310, 194 L. Ed. 2d 463 (2016).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 866. Application of law to all members of regulated class—Completeness of inclusion of members

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3034, 3035, 3055

In order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.[1] However, a regulation challenged under the Equal Protection Clause is not devoid of a rational predicate simply because it happens to be incomplete.[2] The Equal Protection Clause does not require the state to grant all constitutionally permissible exemptions from a general statutory scheme merely because it has chosen to grant one such exception.[3] Such a classification must not be based on existing circumstances only or so constituted as to preclude additions to the number included within a class[4] but must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions.[5] Furthermore, all who are in situations and circumstances which are relative to the subjects of the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class.[6]

Footnotes

1 McErlain v. Taylor, 207 Ind. 240, 192 N.E. 260, 94 A.L.R. 1284 (1934); Cox v. State, 134 Neb. 751, 279 N.W. 482 (1938); State v. Glidden Co., 228 N.C. 664, 46 S.E.2d 860 (1948).

2 Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).

3 Walsh v. Louisiana High School Athletic Ass'n, 616 F.2d 152 (5th Cir. 1980).

4 Martin v. Tollefson, 24 Wash. 2d 211, 163 P.2d 594 (1945); State ex rel. Ford Hopkins Co. v. Mayor and Common Council of City of Watertown, 226 Wis. 215, 276 N.W. 311 (1937).

5 Sumter County v. Allen, 193 Ga. 171, 17 S.E.2d 567 (1941); Martin v. Tollefson, 24 Wash. 2d 211, 163 P.2d 594 (1945); State ex rel. Ford Hopkins Co. v. Mayor and Common Council of City of Watertown, 226 Wis. 215, 276 N.W. 311 (1937).

6 Katzev v. Los Angeles County, 52 Cal. 2d 360, 341 P.2d 310 (1959); West v. Town of Winnsboro, 252 La. 605, 211 So. 2d 665 (1967).

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16B Am. Jur. 2d Constitutional Law § 867

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 867. Exactness in classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035

In a classification for governmental purposes, there usually cannot be an exact exclusion or inclusion of persons and things.[1] The constitutional command for a state to afford equal protection of the law sets a goal that is ordinarily not attainable by the invention and application of a precise formula.[2] Classification is not an exact science.[3]

It is well settled that a classification having some reasonable basis does not offend against the Constitution merely because it is not made with mathematical nicety or because in practice it results in some inequality.[4] States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude.[5] For instance, in levying taxes, a state is not required to resort to close distinctions or to maintain precise, scientific uniformity with reference to composition, use, or value; to hold otherwise would be to subject the essential taxing power of the state to intolerable supervision, hostile to the basic principles of our government, and wholly beyond any protection which the general clause of the 14th Amendment was intended to secure.[6] As another example, under the Equal Protection Clause, a state must make an honest and good-faith effort to construct its legislative districts as nearly of equal population as is practicable, but since absolute equality is a practical impossibility, mathematical exactness or precision is not a constitutional requirement.[7] Abstract symmetry[8] and perfection[9] are not required. What satisfies the rule of equality has not been and probably never can be precisely defined.[10] The principle of equality, therefore, necessarily permits many practical inequalities,[11] and classification is not invalid because it does not depend on scientific or marked differences in things

or persons or in their relations.[12] The Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of the Constitution.[13]

It is not essential that there be a logical appropriateness of the inclusion or exclusion of objects or persons involved in a classification.[14] The existence of the power of classification to suppress an evil is not to be denied simply because some innocent articles or transactions may be found within the proscribed class.[15]

For the purposes of equal protection, there is no constitutional requirement that a statutory provision filter out those and only those who are in the factual position which generated the concern reflected in the statute.[16] A conspicuous pattern of discrimination is not a necessary predicate to a violation of the Equal Protection Clause.[17]

Footnotes

1 Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942) ("the machinery of government would not work if it were not allowed a little play in its joints").
For purposes of equal protection, there is no constitutional requirement that a statutory provision filter out those, and only those, who are in the factual position which generated the concern reflected in the statute. Califano v. Boles, 443 U.S. 282, 99 S. Ct. 2767, 61 L. Ed. 2d 541 (1979).

2 Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans, 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093 (1947).

3 Califano v. Boles, 443 U.S. 282, 99 S. Ct. 2767, 61 L. Ed. 2d 541 (1979).

4 Bowen v. Gilliard, 483 U.S. 587, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987); Cleland v. National College of Business, 435 U.S. 213, 98 S. Ct. 1024, 55 L. Ed. 2d 225 (1978); Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977); Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976); Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Richard v. Hinson, 70 F.3d 415 (5th Cir. 1995); Adam and Eve Jonesboro, LLC v. Perrin, 933 F.3d 951 (8th Cir. 2019); Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 20 Fed. R. Serv. 3d 906 (11th Cir. 1991); Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson, 938 P.2d 504 (Colo. 1997); Fletcher Properties, Inc. v. City of Minneapolis, 931 N.W.2d 410 (Minn. Ct. App. 2019).

5 City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976); Safeway Stores, Inc. v. Oklahoma Retail Grocers Ass'n, Inc., 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959); Richard v. Hinson, 70 F.3d 415 (5th Cir. 1995); Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority, 825 F.2d 367 (11th Cir. 1987).

6 Kahn v. Shevin, 416 U.S. 351, 94 S. Ct. 1734, 40 L. Ed. 2d 189 (1974).

7 Gaffney v. Cummings, 412 U.S. 735, 93 S. Ct. 2321, 37 L. Ed. 2d 298 (1973).

8 Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); People v. Friedman, 302 N.Y. 75, 96 N.E.2d 184 (1950).

9 Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979); Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); Johnson v. Rodriguez, 110 F.3d 299 (5th Cir. 1997); Hines v. Quillivan, 395 F. Supp. 3d 857 (S.D. Tex. 2019); Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996); Hunter v. Commonwealth, 587 S.W.3d 298 (Ky. 2019); Whitaker v. DeVilla, 147 N.J. 341, 687 A.2d 738 (1997).
In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. Jefferson v. Hackney, 406 U.S. 535, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972); Mills v. State of Me., 118 F.3d 37 (1st Cir. 1997).

10 New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

11 New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938); Ex parte Strauch, 80 Okla. Crim. 89, 157 P.2d 201 (1945).
Incidental individual inequality resulting from the operation of a rule of court does not make it offensive to the 14th Amendment. Martin v. Walton, 368 U.S. 25, 82 S. Ct. 1, 7 L. Ed. 2d 5 (1961).

12 Metropolitan Cas. Ins. Co. of New York v. Brownell, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935); Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932); Vogulkin v. State Bd. of Ed., 194 Cal. App. 2d 424, 15 Cal. Rptr. 335 (1st Dist. 1961).

13 Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973).

14 F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993); Hansen v. Raleigh, 391 Ill. 536, 63 N.E.2d 851, 163 A.L.R. 1425 (1945).

15 Corneal v. State Plant Bd., 95 So. 2d 1, 70 A.L.R.2d 845 (Fla. 1957).
A statute may permissibly be overinclusive or underinclusive under "reasonable basis" review of a classification challenged under the Federal Constitution's Equal Protection Clause or the Utah Constitution's uniform operation of laws provision; perfection is by no means required. Spencer v. Utah State Bar, 2012 UT 92, 293 P.3d 360 (Utah 2012).

16 Califano v. Boles, 443 U.S. 282, 99 S. Ct. 2767, 61 L. Ed. 2d 541 (1979).

17 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).

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16B Am. Jur. 2d Constitutional Law § 868

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Constitutional Law
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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

2. Classification

b. Essential and Nonessential Characteristics

§ 868. Completeness of regulation of evils in classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3036

Legislation is not unconstitutional merely because it is not all-embracing[1] and does not include all the evils within its reach.[2] Without violating the Equal Protection Clause, a legislature may implement its program step by step in the field of economic regulation and may adopt regulations that only partially ameliorate a perceived evil. It may defer complete elimination of the evil to future regulations.[3] It may proceed cautiously, step by step, and if an evil is specially experienced in a particular branch of business, it is not necessary that the prohibition should be couched in all-embracing terms.[4] For purposes of the Equal Protection Clause, a state legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the state to remedy every ill.[5] There is no constitutional requirement that regulation must reach every class to which it might be applied or that the legislature must regulate all or none.[6] Mere underinclusiveness is not fatal to the validity of a law under the Equal Protection Clause, even if the law disadvantages an individual or identifiable members of a group.[7] If the class discriminated against is or reasonably might be considered to define those from whom the evil is to be feared, it may properly be picked out.[8]

Footnotes

1 Hunter v. Flowers, 43 So. 2d 435, 14 A.L.R.2d 447 (Fla. 1949); Madison Metropolitan Sewerage Dist. v. Committee on Water Pollution, 260 Wis. 229, 50 N.W.2d 424 (1951).

A gender-based classification will survive an equal protection challenge as long as it is substantially related to achievement of the governmental objective in question; the statute need not be capable of achieving its ultimate objective in every instance. Tuan Anh Nguyen v. I.N.S., 533 U.S. 53, 121 S. Ct. 2053, 150 L. Ed. 2d 115, 178 A.L.R. Fed. 587 (2001).

2 Hughes v. Superior Court of Cal. in and for Contra Costa County, 339 U.S. 460, 70 S. Ct. 718, 94 L. Ed. 985, 57 Ohio L. Abs. 298 (1950); Minerva Dairy, Inc. v. Harsdorf, 905 F.3d 1047 (7th Cir. 2018), cert. denied, 139 S. Ct. 2746, 204 L. Ed. 2d 1134 (2019); Nebraska Beef Producers Committee v. Nebraska Brand Committee, 287 F. Supp. 3d 740 (D. Neb. 2018).

3 City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976); Martinez v. Mullen, 11 F. Supp. 3d 149 (D. Conn. 2014), judgment aff'd, 793 F.3d 281 (2d Cir. 2015); People v. Cervantes, 44 Cal. App. 5th 884, 258 Cal. Rptr. 3d 176 (2d Dist. 2020), review filed, January 31, 2020 and (Mar. 3, 2020); Fletcher Properties, Inc. v. City of Minneapolis, 931 N.W.2d 410 (Minn. Ct. App. 2019).

A statute is not invalid under the Federal Constitution because it might have gone further than it did, since a legislature need not strike at all evils at the same time, and reform may be taken one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Schilb v. Kuebel, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

A state legislature may, consistently with the Equal Protection Clause, address a problem one step at a time or even select one phase of one field and apply a remedy there, neglecting the others. Jefferson v. Hackney, 406 U.S. 535, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. McDonald v. Board of Election Com'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969).

4 N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352 (1937); State v. Buckley, 16 Ohio St. 2d 128, 45 Ohio Op. 2d 469, 243 N.E.2d 66 (1968); Kuhl Motor Co. v. Ford Motor Co., 270 Wis. 488, 71 N.W.2d 420, 55 A.L.R.2d 467 (1955).

A legislature may, without violating the Equal Protection Clause, select one phase of one field and apply a remedy there while neglecting other phases of that same field. Cleland v. National College of Business, 435 U.S. 213, 98 S. Ct. 1024, 55 L. Ed. 2d 225 (1978).

5 State ex rel. Oklahoma State Board of Behavioral Health Licensure v. Vanita Matthews-Glover, LPC, 2019 OK CIV APP 76, 455 P.3d 16 (Div. 4 2019).

6 Geduldig v. Aiello, 417 U.S. 484, 94 S. Ct. 2485, 41 L. Ed. 2d 256 (1974); Consolidated Cigar Corp. v. Department of Public Health, 372 Mass. 844, 364 N.E.2d 1202 (1977); Washington Statewide Organization of Stepparents v. Smith, 85 Wash. 2d 564, 536 P.2d 1202, 75 A.L.R.3d 1119 (1975).

There is no requirement under the Constitution that Congress detect and correct abuses in the administration of all related programs before acting to combat those experienced in one. Cleland v. National College of Business, 435 U.S. 213, 98 S. Ct. 1024, 55 L. Ed. 2d 225 (1978) (program for veterans' educational benefits).

Equal protection of the laws does not require Congress, in prohibiting some practices within its power, to prohibit all within its power. U.S. v. Petrillo, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947).

7 Nixon v. Administrator of General Services, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977).

8 Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945); Watts v. Mann, 187 S.W.2d 917 (Tex. Civ. App. Austin 1945), writ refused.

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16B Am. Jur. 2d Constitutional Law § 869

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 869. Gender discrimination under Equal Protection Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3081, 3380 to 3429

A.L.R. Library

Equal Protection and Due Process Clause Challenges Based on Sex Discrimination—Supreme Court Cases, 178 A.L.R. Fed. 25

The Equal Protection Clause of the 14th Amendment prohibits the states from denying to any person the equal protection of the laws; this has been interpreted as prohibiting many forms of discrimination on the basis of sex.[1] The right to be free from gender discrimination is secured by the Equal Protection Clause of the 14th Amendment.[2] The Equal Protection Clause prevents official conduct discriminating on the basis of sex, not official conduct that bans discrimination against or preferential treatment to individuals on the basis of sex.[3]

Sex is a suspect classification under the Equal Protection Clause, calling for heightened scrutiny.[4] Classifications based upon sex or gender are inherently suspect and must therefore be subjected to close judicial scrutiny of an intermediate nature under the

Equal Protection Clause.[5] Hence, to withstand a constitutional challenge under the Equal Protection Clause, classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives.[6]

A classification based on gender must substantially serve an important governmental interest today, for in interpreting the equal protection guarantee, the Supreme Court recognizes that new insights and societal understandings can reveal unjustified inequality that once passed unnoticed and unchallenged.[7] Under equal protection principles, the Supreme Court views with suspicion laws that rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.[8] Under equal protection principles, if a statutory objective is to exclude or protect members of one gender in reliance on fixed notions concerning that gender's roles and abilities, the objective itself is illegitimate.[9]

Just because a statutory policy discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review on an equal protection claim.[10]

Discrimination against transgendered individuals because of their failure to conform to gender stereotypes constitutes discrimination on the basis of sex for equal protection purposes.[11] All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype, which includes perceived gender-nonconformity, a form of sex-based discrimination that is subject to heightened scrutiny under the Equal Protection Clause.[12]

All classifications based on sex are not unconstitutional; the law recognizes that there are some real differences between men and women and permits different treatment that provides legitimate accommodation for those differences, but the law will not allow classifications based on fixed, archaic, or stereotypical notions concerning the relative roles and abilities of females and males.[13]

CUMULATIVE SUPPLEMENT

Cases:

Heightened scrutiny standard of review applied to equal protection challenge asserted by transgender high school student, who identified as male, to county school district's bathroom policy, which prevented student from using boys' bathroom at high school because it required students to use the bathrooms that corresponded to their gender assigned at birth; although policy provided transgender students with access to a gender-neutral restroom, it placed special burden on transgender students because their gender identity did not match their sex assigned at birth, so that discriminated on the basis of sex or gender. U.S. Const. Amend. 14, § 1. Adams by and through Kasper v. School Board of St. Johns County, 968 F.3d 1286 (11th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971).
Under an equal protection analysis, state actors controlling the gates to opportunity may not exclude qualified individuals based on fixed notions concerning the roles and abilities of males and females. U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996).
As to equal rights amendments, see §§ 878, 879.
As to the Equal Protection Clause as guaranteeing civil rights, generally, see Am. Jur. 2d, Civil Rights § 8.
As to the Nineteenth Amendment's barring sex as a qualification for voting, see Am. Jur. 2d, Elections § 151.

As to job discrimination based on sex or pregnancy, generally, see Am. Jur. 2d, Job Discrimination §§ 134 to 145.

2 Tipler v. Douglas County, Neb., 482 F.3d 1023 (8th Cir. 2007).

3 Coalition to Defend Affirmative Action v. Granholm, 473 F.3d 237, 215 Ed. Law Rep. 569, 2006 FED App. 0476P (6th Cir. 2006).

4 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017); City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); Califano v. Goldfarb, 430 U.S. 199, 97 S. Ct. 1021, 51 L. Ed. 2d 270 (1977); Craig v. Boren, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976); Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Keevan v. Smith, 100 F.3d 644 (8th Cir. 1996); Shuford v. Alabama State Bd. of Educ., 897 F. Supp. 1535, 103 Ed. Law Rep. 978 (M.D. Ala. 1995); Adams By and Through Adams v. Baker, 919 F. Supp. 1496, 108 Ed. Law Rep. 637 (D. Kan. 1996); In re Pensions of 19th Dist. Judges under Dearborn Employees Retirement System, 213 Mich. App. 701, 540 N.W.2d 784 (1995); City of Jackson v. Lakeland Lounge of Jackson, Inc., 688 So. 2d 742, 67 A.L.R.5th 719 (Miss. 1996).

5 Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979); Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973) (stating further that a departure from the traditional rational basis analysis of statutes with respect to sex-based classifications is justified).

With respect to equal protection challenges, distinctions based on parents' marital status are subject to the same heightened scrutiny as distinctions based on gender. Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

As to the standard of review designated as "intermediate scrutiny," see § 853.

As to classifications based on sexual orientation, generally, see §§ 885 to 887.

6 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017); Tuan Anh Nguyen v. I.N.S., 533 U.S. 53, 121 S. Ct. 2053, 150 L. Ed. 2d 115, 178 A.L.R. Fed. 587 (2001); J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994); Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982); Borkowski v. Baltimore County, Maryland, 414 F. Supp. 3d 788, 373 Ed. Law Rep. 773 (D. Md. 2019); Rowitz v. McClain, 2019-Ohio-5438, 138 N.E.3d 1241 (Ohio Ct. App. 10th Dist. Franklin County 2019).

The party who seeks to defend gender-based government action under the Equal Protection Clause must demonstrate an exceedingly persuasive justification for that action. A.H. v. Minersville Area School District, 408 F. Supp. 3d 536, 372 Ed. Law Rep. 835 (M.D. Pa. 2019).

For purposes of equal protection principles in the area of statutory classifications by gender, the mere recitation of a benign, compensatory purpose is not an automatic shield that protects against any inquiry into the actual purposes underlying a legislative scheme. U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996); Califano v. Webster, 430 U.S. 313, 97 S. Ct. 1192, 51 L. Ed. 2d 360 (1977).

The concept of equal justice under the law requires a state to govern impartially and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective, that is, it may not subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose. Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983).

7 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

8 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

9 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

10 Sassman v. Brown, 99 F. Supp. 3d 1223 (E.D. Cal. 2015), modified on other grounds on reconsideration, 2015 WL 8780632 (E.D. Cal. 2015).

11 Glenn v. Brumby, 724 F. Supp. 2d 1284 (N.D. Ga. 2010), aff'd, 663 F.3d 1312, 84 A.L.R. Fed. 2d 519 (11th Cir. 2011); Iglesias v. True, 403 F. Supp. 3d 680 (S.D. Ill. 2019).

Intermediate scrutiny applicable to quasi-suspect classes governed an equal protection claim by a transgender arrestee against the city and its officials in a § 1983 action based on alleged disparate treatment for being transgender when he was arrested and detained for protesting worldwide social and economic disparity; transgender people suffered a long history of persecution and discrimination, transgender status had no relation to ability to contribute to society, transgender status was sufficiently discernible characteristic to

define a discrete minority class, and transgender people were a politically powerless minority. Adkins v. City of New York, 143 F. Supp. 3d 134 (S.D. N.Y. 2015), referring to 42 U.S.C.A. § 1983.

Department of Defense Implementation Plan restricting transgender persons in military was subject to heightened scrutiny, rather than rational basis review, with the appropriate level of deference to the military's evaluation of the evidence underlying the Plan, in the transgender plaintiffs' suit claiming an equal protection violation; the Plan discriminated on the basis of transgender status, not a medical condition. Stone v. Trump, 400 F. Supp. 3d 317 (D. Md. 2019).

12 Adams by and through Kasper v. School Board of St. Johns County, Florida, 318 F. Supp. 3d 1293 (M.D. Fla. 2018).

13 Faulkner v. Jones, 858 F. Supp. 552, 93 Ed. Law Rep. 1210 (D.S.C. 1994), aff'd as modified on other grounds and remanded, 51 F.3d 440, 99 Ed. Law Rep. 99 (4th Cir. 1995).

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16B Am. Jur. 2d Constitutional Law § 870

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 870. Applicability to men as well as to women as a class

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3081, 3380 to 3429

A.L.R. Library

Requirements and Effects of Putative Father Registries, 28 A.L.R.6th 349
Constitutionality of gender-based classifications in criminal laws proscribing nonsupport of spouse or child, 14 A.L.R.4th 717
Constitutionality of assault and battery laws limited to protection of females only or which provide greater penalties for males than for females, 5 A.L.R.4th 708
Constitutionality of rape laws limited to protection of females only, 99 A.L.R.3d 129
Equal Protection and Due Process Clause Challenges Based on Sex Discrimination—Supreme Court Cases, 178 A.L.R. Fed. 25
What Constitutes Reverse Sex or Gender Discrimination Against Males Violative of Federal Constitution or Statutes—Nonemployment Cases, 166 A.L.R. Fed. 1
What constitutes reverse or majority gender discrimination against males violative of federal constitution or statutes—private employment cases, 162 A.L.R. Fed. 273

What constitutes reverse or majority gender discrimination against males violative of Federal Constitution or statutes—public employment cases, 153 A.L.R. Fed. 609

Although most sex discrimination cases involve discrimination against women in favor of men, reverse discrimination in favor of women and against men is also a violation of equal protection.[1] Statutes, from an era when the lawbooks were rife with overbroad generalizations about the way men and women are, are subject to review in an equal protection challenge under the heightened scrutiny that now attends all gender-based classifications.[2]

The fact that a statutory scheme expressly discriminates against men rather than women does not protect it from scrutiny.[3] Thus, statutes that distinguish between males and females based on old notions, such as a belief that females should be afforded special protection from "rough talk" because of their perceived special sensitivities, can no longer withstand equal protection scrutiny.[4] However, the difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress from addressing the problem at hand in a manner specific to each gender.[5] However, under equal protection principles, no important governmental interest is served by laws grounded in the obsolescing view that unwed fathers are invariably less qualified and entitled than mothers to take responsibility for nonmarital children; overbroad generalizations of that order have a constraining impact, descriptive though they may be of the way many people still order their lives.[6]

Footnotes

1 Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982).
As to job discrimination against men on the basis of sex, see Am. Jur. 2d, Job Discrimination § 142.

2 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).
Equal application of laws that classify on the basis of gender to men and women as a class does not remove them from intermediate scrutiny under Fourteenth Amendment substantive due process and equal protection; it makes no difference to the existence of a sex-based classification whether the challenged law imposes gender homogeneity or gender heterogeneity because either way, the classification is one that limits the affected individuals' opportunities based on their sex, as compared to the sex of the other people involved in the arrangement or transaction. Waters v. Ricketts, 48 F. Supp. 3d 1271 (D. Neb. 2015), aff'd, 798 F.3d 682 (8th Cir. 2015).

3 Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).

4 In Interest of Joseph T., 312 S.C. 15, 430 S.E.2d 523 (1993).

5 Tuan Anh Nguyen v. I.N.S., 533 U.S. 53, 121 S. Ct. 2053, 150 L. Ed. 2d 115, 178 A.L.R. Fed. 587 (2001) (holding that a statute that imposes different requirements for the acquisition of citizenship by a child, depending upon whether the child's citizen parent is the mother or the father, did not violate the Equal Protection Clause).

6 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

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16B Am. Jur. 2d Constitutional Law § 871

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Constitutional Law
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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 871. Remedial legislation in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3081, 3380 to 3429

The legislature may provide for the special problems of women without offending the Equal Protection Clause.[1] With regard to the constitutionality of certain sex-based statutory classifications under the Equal Protection Clause, the unquestioned right of a state to further a desirable end by legislation is not in itself sufficient to justify a gender-based distinction, but rather it must be shown that the distinction is structured reasonably to further such end, and the statutory classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced are treated alike.[2]

A gender-conscious remedial scheme satisfies constitutional equal protection requirements if it directly protects the interests of the disproportionately burdened gender.[3] Sex classifications may be used to compensate women for particular economic disabilities they have suffered, to promote equal employment opportunity, and to advance the full development of the talent and capacities of the nation's people; however, such classifications may not be used to create or perpetuate the legal, social, and economic inferiority of women.[4]

Where the state's compensatory and ameliorative purposes are as well served by a gender-neutral classification as one that gender classifies and therefore carries with it the baggage of sexual stereotypes, the state cannot be permitted to classify on the basis of sex, and such is doubly so where the choice made by the state appears to redound—if only indirectly—to the benefit

of those without the need for special solicitude.[5] A distinction which on its face is not sex related may nonetheless violate the Equal Protection Clause if it is in fact a subterfuge to accomplish a forbidden discrimination.[6]

Although the test for determining the validity of gender-based classifications is straightforward, it must be applied free of fixed notions concerning the roles and abilities of males and females. If the statutory objective of a gender-based classification is to exclude or protect members of one gender because they are presumed to suffer from some inherent handicap or to be innately inferior, the objective itself is illegitimate. In limited circumstances, a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened.[7]

Gender-based discrimination is unconstitutional absent a showing that the classification substantially furthers an important governmental interest.[8]

Congress has the power to enforce the Equal Protection Clause by passing appropriate legislation.[9] The Equal Pay Act, which has been made applicable to the states, is one example of an antidiscrimination measure that should be viewed as an exercise of this congressional power of enforcement.[10]

Footnotes

1 Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 101 S. Ct. 1200, 67 L. Ed. 2d 437 (1981).
As to the validity under federal law of state statutes creating sex-based distinctions, see Am. Jur. 2d, Job Discrimination §§ 142 to 145.

2 Caban v. Mohammed, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979).
State-sponsored gender discrimination violates equal protection unless it serves important governmental objectives and the discriminatory means employed are substantially related to the achievement of those objectives. U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000).

3 Cohen v. Brown University, 991 F.2d 888, 82 Ed. Law Rep. 352 (1st Cir. 1993).

4 U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996); Reach Academy for Boys and Girls, Inc. v. Delaware Department of Education, 46 F. Supp. 3d 455, 314 Ed. Law Rep. 693 (D. Del. 2014); Back v. Carter, 933 F. Supp. 738 (N.D. Ind. 1996).

5 Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).

6 General Elec. Co. v. Gilbert, 429 U.S. 125, 97 S. Ct. 401, 50 L. Ed. 2d 343 (1976).

7 Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982).

8 Kirchberg v. Feenstra, 450 U.S. 455, 101 S. Ct. 1195, 67 L. Ed. 2d 428 (1981); Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 100 S. Ct. 1540, 64 L. Ed. 2d 107 (1980).

9 U.S. Const. Amend. XIV, § 5.
As to the enforcement of the 14th Amendment under Section 5 through congressional legislation, generally, see Am. Jur. 2d, Civil Rights § 9.

10 Timmer v. Michigan Dept. of Commerce, 104 F.3d 833, 1997 FED App. 0015P (6th Cir. 1997).
The Equal Pay Act's prohibition on discrimination fits within the objectives of the Enforcement Clause of the 14th Amendment, and the Act is an exercise of congressional power under that section. Varner v. Illinois State University, 226 F.3d 927, 147 Ed. Law Rep. 451 (7th Cir. 2000).
As to the Equal Pay Act, generally, see Am. Jur. 2d, Job Discrimination § 23.

16B Am. Jur. 2d Constitutional Law § 872

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 872. Pregnancy discrimination in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3422 to 3425

Because normal pregnancy is an objectively identifiable physical condition with unique characteristics, absent a showing that distinctions involving pregnancy are mere pretexts designed to effect invidious discrimination against members of one sex or the other, a classification based on pregnancy does not constitute a gender-based classification under the Equal Protection Clause. Distinctions based on pregnancy are therefore analyzed under the rational relationship standard.[1]

Despite this, some states, such as California, construe their own constitutions such that pregnancy discrimination is a form of sex discrimination.[2]

An article which criminalizes conduct which causes the death of an unborn child does not violate equal protection by adopting gender-based differences as to who may be criminally liable; although the article exempts mothers from prosecution for causing harm to an unborn child, it does not differentiate based on gender, since any man or woman, other than the mother or authorized medical care giver, is subject to prosecution for harm done to an unborn child.[3]

A county police department's maternity leave policy, which permitted parents of both genders to take time off following the birth of a child, but allowed only women who had given birth to use accrued sick days before being taken off payroll, is narrowly tailored to address the government's valid interest in protecting women in the workplace, and thus does not violate the Equal Protection Clause; the policy was attributable to different needs of men and women, given the physical reality of childbirth,

which entailed a number of medical procedures and recovery time, and required repeated visits to specialized doctors and time to address and investigate a variety of possible complications.[4] In addition, a sheriff's transfer of a pregnant patrol deputy to light duty assignment in corrections control room is a reasonable accommodation of her pregnancy restrictions under a state human rights act and the Equal Protection Clause, even though the sheriff could not guarantee a full 40-hour work week due to the uncertainty of available shifts.[5]

Footnotes

1 Commissioner of Social Services of Franklin County on Behalf of Rebecca G. v. Bernard B., 87 N.Y.2d 61, 637 N.Y.S.2d 659, 661 N.E.2d 131 (1995).
As to the Pregnancy Discrimination Act, see Am. Jur. 2d, Job Discrimination § 137.
As to state laws providing special pregnancy leave and associated benefits, see Am. Jur. 2d, Job Discrimination § 145.
As to the exclusion of unwed mothers from public school, see Am. Jur. 2d, Schools § 265.

2 Badih v. Myers, 36 Cal. App. 4th 1289, 43 Cal. Rptr. 2d 229 (1st Dist. 1995).

3 U.S. v. Boie, 70 M.J. 585 (A.F.C.C.A. 2011).

4 Wahl v. County of Suffolk, 466 Fed. Appx. 17 (2d Cir. 2012).

5 Pettengell v. Scott, 369 F. Supp. 3d 882 (N.D. Ill. 2019).

16B Am. Jur. 2d Constitutional Law § 873

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 873. Education; school athletic programs in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3393 to 3398, 3463

A.L.R. Library

Application of state law to sex discrimination in sports, 66 A.L.R.3d 1262
Sex discrimination in public education under Title IX—Supreme Court cases, 158 A.L.R. Fed. 563
Suits by female college athletes against colleges and universities claiming that decisions to discontinue particular sports or to deny varsity status to particular sports deprive plaintiffs of equal education opportunities required by Title IX (20 U.S.C.A. secs. 1681-1688), 129 A.L.R. Fed. 571
Validity, under federal law, of sex discrimination in athletics, 23 A.L.R. Fed. 664

The states violate the Equal Protection Clause when their laws favor the members of one class over another or exclude one class but not another in the course of providing educational opportunities for their citizens. Thus, the policy of a state-supported university, which limited its enrollment to women, of denying otherwise qualified males the right to enroll for credit in its nursing school violated the Equal Protection Clause.[1] It is also a violation of the Equal Protection Clause for a state-supported military school or university to limit its enrollment only to men and to deny such enrollment to women.[2] A policy in an elementary

school that forbids students from wearing jewelry or other attachments not consistent with community standards, under which a male student was forbidden from wearing an earring, was substantially related to the legitimate educational function of the school and so was not gender discrimination in violation of the student's equal protection rights, in light of evidence that the enforcement of community standards of dress instilled discipline.[3]

School athletic programs are often seen as providing unequal protection of the laws to female students. Thus, an order requiring a university to comply with Title IX of the Civil Rights Act by accommodating fully and effectively the athletic interests and abilities of its women students satisfied equal protection requirements, even though it was explicitly gender conscious. The governmental objectives of avoiding the use of federal resources to support discriminatory practices, providing individual citizens effective protection against those practices, and the judicial enforcement of federal antidiscrimination statutes were important governmental objectives; the means employed by a district court in fashioning relief were clearly and substantially related to the statutory objectives, the relief intentionally and directly assisted members of the sex that was disproportionately burdened, and male students would not be disadvantaged by the full and effective accommodation of the athletic interests and abilities of the female students.[4] However, a university's decision to terminate its men's swimming program but retain its women's swimming program, motivated by budget constraints and Title IX, did not violate the Equal Protection Clause.[5]

Although a student has no constitutional right to participate in interscholastic athletics, any program of interscholastic sports, after having been provided, must be administered without violating the 14th Amendment, at least if the case involves an equal protection claim arising from gender-based discrimination.[6] Nevertheless, for the purpose of determining whether gender-based discrimination is justifiable in the context of student participation in athletics, student safety is an important governmental objective.[7]

Lower courts too narrowly confined strict equal protection scrutiny of a state university's use of racial classifications in admissions, by deferring to the university's good faith.[8]

To support a Title IX or equal protection claim under the selective enforcement theory, a male plaintiff must demonstrate that a female was in circumstances sufficiently similar to his own and was treated more favorably by the school.[9]

Footnotes

1 Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982).
As to sex discrimination in education, generally, see Am. Jur. 2d, Civil Rights §§ 336 to 357.
As to the exclusion of unwed mothers from public school, see Am. Jur. 2d, Schools § 265.

2 U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996) (holding that the Commonwealth of Virginia failed to show any exceedingly persuasive justification for excluding women from the citizen-soldier program offered at a Virginia military college, such that Virginia's refusal to admit women to the program violated equal protection; despite Virginia's contentions that the option of single-sex education contributed to a diversity in educational approaches, Virginia did not show that the school was established or had been maintained with a view to diversifying by its categorical exclusion of women educational opportunities within the state).
As to discrimination in higher education, Am. Jur. 2d, Civil Rights §§ 331, 332.

3 Hines v. Caston School Corp., 651 N.E.2d 330, 101 Ed. Law Rep. 392 (Ind. Ct. App. 1995).

4 Cohen v. Brown University, 991 F.2d 888, 82 Ed. Law Rep. 352 (1st Cir. 1993).
As to Title IX, generally, see Am. Jur. 2d, Civil Rights §§ 338 to 357.

5 Kelley v. Board of Trustees, 35 F.3d 265, 94 Ed. Law Rep. 115 (7th Cir. 1994).

6 Robbins by Robbins v. Indiana High School Athletic Ass'n, Inc., 941 F. Supp. 786, 113 Ed. Law Rep. 1240 (S.D. Ind. 1996).

7 Adams By and Through Adams v. Baker, 919 F. Supp. 1496, 108 Ed. Law Rep. 637 (D. Kan. 1996); Beattie v. Line Mountain School Dist., 992 F. Supp. 2d 384, 306 Ed. Law Rep. 345 (M.D. Pa. 2014).

8 Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

9 Doe v. Fairfax County School Board, 403 F. Supp. 3d 508, 371 Ed. Law Rep. 993 (E.D. Va. 2019).

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16B Am. Jur. 2d Constitutional Law § 874

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 874. Employment; sexual harassment in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3388 to 3392

A.L.R. Library

Federal and State Constitutional Provisions and State Statutes as Prohibiting Employment Discrimination Based on Heterosexual Conduct or Relationship, 123 A.L.R.5th 411
Sex discrimination in United States Armed Forces, 56 A.L.R. Fed. 850
Application of Title IX of the Education Amendments of 1972 (20 U.S.C.A. secs. 1681 et seq.) to sex discrimination in educational employment, 54 A.L.R. Fed. 522

The Equal Protection Clause of the 14th Amendment confers a federal constitutional right to be free from gender discrimination at the hands of governmental actors which is broad enough to prohibit state actors from engaging in intentional conduct designed to impede a person's career advancement based on the person's gender.[1] In some instances, the Equal Protection Clause covers the rights of females to seek and retain employment on the same basis as male employees.[2] Sex discrimination[3] and sexual harassment[4] by a state actor may violate the Equal Protection Clause. To sustain an equal protection claim of sexual harassment, a plaintiff must show both sexual harassment and an intent to harass based upon that plaintiff's membership in a particular class

of citizens.[5] In order for a female plaintiff to succeed on suspect class § 1983 equal protection claim against a public employer, males or nonprotected class women must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.[6] The basic elements of disparate-treatment sex discrimination claims, asserted as equal protection claims under § 1983 or as Title VII claims, are that the public employee suffered an adverse employment action taken because of her sex.[7]

Practice Tip:

To the extent that a plaintiff linked her alleged retaliatory dismissal from county employment to her gender, that allegation constituted a part of her equal protection discrimination (i.e., hostile work environment, sexual harassment) claim; however, a pure or generic retaliation claim does not implicate the Equal Protection Clause.[8]

Footnotes

1 Lindsey v. Shalmy, 29 F.3d 1382 (9th Cir. 1994); Orozco v. County of Monterey, 941 F. Supp. 930 (N.D. Cal. 1996).
The Equal Protection Clause of the 14th Amendment prohibits race and sex discrimination in public employment. Hornsby-Culpepper v. Ware, 906 F.3d 1302 (11th Cir. 2018).

2 Shawer v. Indiana University of Pennsylvania, 602 F.2d 1161 (3d Cir. 1979); Avery v. Homewood City Bd. of Ed., 674 F.2d 337, 3 Ed. Law Rep. 506 (5th Cir. 1982); Hanson v. Hoffmann, 628 F.2d 42 (D.C. Cir. 1980).
As to sex discrimination in employment, generally, see Am. Jur. 2d, Job Discrimination §§ 135 to 146.
As to sex as a qualification for public office or employment, see Am. Jur. 2d, Public Officers and Employees § 82.

3 Southard v. Texas Bd. of Criminal Justice, 114 F.3d 539 (5th Cir. 1997); Duckworth v. St. Louis Metropolitan Police Dept., 491 F.3d 401 (8th Cir. 2007); Bremiller v. Cleveland Psychiatric Institute, 879 F. Supp. 782 (N.D. Ohio 1995).
Title IX proscribes gender discrimination against employees and students in education programs or activities receiving federal financial assistance. Waters v. Drake, 222 F. Supp. 3d 582, 343 Ed. Law Rep. 245 (S.D. Ohio 2016) (referring to 20 U.S.C.A. §§ 1681 et seq.).
Facts alleged by female state agency employees were not sufficient to create a plausible inference that employees were deprived of equal protection, as required to state claim for violation of equal protection pursuant to § 1983, arising from employees being subjected to purportedly unlawful Nebraska Criminal Justice Information System (NCJIS) searches while certain groups of male agency members and coworkers were not; the employees did not allege that they were similarly situated to any of the groups, the employees did not allege any gender-related comments or conduct, and it was sheer speculation to conclude that the employees were subjected to alleged unlawful activity because they were female. Stamm v. County of Cheyenne, Nebraska, 326 F. Supp. 3d 832 (D. Neb. 2018) (referring to 42 U.S.C.A. § 1983).
The male police officer's claim that he was denied a promotion because he was not in a romantic relationship with a police department executive did not suffice to state a gender discrimination claim under the Equal Protection Clause; favoritism resulting from a personal relationship could not be equated to sex

discrimination, as disadvantaged competitor was as likely to be another woman as man. Word v. City of Chicago, 946 F.3d 391 (7th Cir. 2020).

4 Saulpaugh v. Monroe Community Hosp., 4 F.3d 134 (2d Cir. 1993); Lauderdale v. Texas Dept. of Criminal Justice, Institutional Div., 512 F.3d 157 (5th Cir. 2007); Valentine v. City of Chicago, 452 F.3d 670 (7th Cir. 2006), as amended, (July 6, 2006); Cross v. State of Ala., State Dept. of Mental Health & Mental Retardation, 49 F.3d 1490 (11th Cir. 1995); Bremiller v. Cleveland Psychiatric Institute, 879 F. Supp. 782 (N.D. Ohio 1995).

5 Stafford v. State, 835 F. Supp. 1136 (W.D. Mo. 1993); Wise v. New York City Police Dept., 928 F. Supp. 355 (S.D. N.Y. 1996).

6 Foster v. Judnic, 963 F. Supp. 2d 735 (E.D. Mich. 2013), aff'd, 573 Fed. Appx. 377 (6th Cir. 2014), referring to 42 U.S.C.A. § 1983.

7 Naumovski v. Norris, 934 F.3d 200, 369 Ed. Law Rep. 41 (2d Cir. 2019).

8 Watkins v. Bowden, 105 F.3d 1344 (11th Cir. 1997).

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16B Am. Jur. 2d Constitutional Law § 875

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 875. Jury selection in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3426 to 3429

The Equal Protection Clause prohibits discrimination in jury selection on the basis of sex or gender or on an assumption of bias by the venireperson in a particular case for no reason other than gender.[1] It also prohibits the exercise of peremptory strikes that are based solely on gender.[2] While generalizing about people's traits in order to predict their biases as jurors may be integral to the "art" of jury selection, there are limits to that practice. The elimination of potential jurors because of generalizations based on gender implicates the Equal Protection Clause and is an abuse of peremptory strikes.[3] The intentional use of gender when selecting jurors violates a defendant's right to an impartial jury under the Equal Protection Clause.[4]

Footnotes

1 People v. Rodriguez, 2015 CO 55, 351 P.3d 423 (Colo. 2015); Lenz v. State, 245 So. 3d 795 (Fla. 4th DCA 2018); Henderson v. State, 320 Ga. App. 553, 740 S.E.2d 280 (2013); Payne v. Gundy, 196 W. Va. 82, 468 S.E.2d 335 (1996).
As to a gender qualification to serve on a jury, see Am. Jur. 2d, Jury § 145.

2 Evans v. U.S., 682 A.2d 644 (D.C. 1996).
As to the prohibition of gender-based exclusion of prospective jurors, generally, see Am. Jur. 2d, Jury § 207.

3 People v. Allen, 86 N.Y.2d 101, 629 N.Y.S.2d 1003, 653 N.E.2d 1173 (1995).

4 Cleveland v. State, 318 Ark. 738, 888 S.W.2d 629 (1994); State v. Rodriguez, 37 Conn. App. 589, 658 A.2d 98 (1995); Smith v. State, 661 So. 2d 358 (Fla. 1st DCA 1995); Herrin v. State, 221 Ga. App. 356, 471 S.E.2d 297 (1996); People v. Garcia, 217 A.D.2d 119, 636 N.Y.S.2d 370 (2d Dep't 1995); State v. Turner, 879 S.W.2d 819 (Tenn. 1994); Payne v. Gundy, 196 W. Va. 82, 468 S.E.2d 335 (1996); State v. Jagodinsky, 209 Wis. 2d 577, 563 N.W.2d 188 (Ct. App. 1997).

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16B Am. Jur. 2d Constitutional Law § 876

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 876. Other matters in classifications based on gender

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3380 to 3429

A.L.R. Library

Regulation of exposure of female, but not male, breasts, 67 A.L.R.5th 431
Application of state law to sex discrimination in sports, 66 A.L.R.3d 1262
Suits by female college athletes against colleges and universities claiming that decisions to discontinue particular sports or to deny varsity status to particular sports deprive plaintiffs of equal education opportunities required by Title IX (20 U.S.C.A. secs. 1681-1688), 129 A.L.R. Fed. 571
Validity, under federal law, of sex discrimination in athletics, 23 A.L.R. Fed. 664 (sec. 3 superseded in part by Suits by female college athletes against colleges and universities claiming that decisions to discontinue particular sports or to deny varsity status to particular sports deprive plaintiffs of equal education opportunities required by Title IX (20 U.S.C.A. secs. 1681-1688), 129 A.L.R. Fed. 571)
Suits by female college athletes against colleges and universities claiming that decisions to discontinue particular sports or to deny varsity status to particular sports deprive plaintiffs of equal education opportunities required by Title IX (20 U.S.C.A. secs. 1681-1688), 129 A.L.R. Fed. 571

The equal protection of the laws also applies in such important areas as:

• domestic relations,[1] including paternity[2] and safe haven and abandonment laws[3]

• domestic violence[4]

• military benefits and allowances for persons in military service[5]

• probate[6]

• railroad retirement benefits[7]

• sales of intoxicating liquors[8]

• sports and athletics, generally[9]

• workers' compensation laws[10]

• grooming policies in prisons[11]

City zoning ordinances controlling adult entertainment establishments have been held not violative of equal protection by regulating the public exposure of female breasts but not male breasts.[12] On the other hand, women protestors and association seeking a preliminary injunction preventing enforcement of a city's nudity ordinance, imposing criminal penalties for females who exposed their breasts in public other than for breastfeeding, had a substantial likelihood of success on the merits of their claim that the ordinance was based on impermissible gender stereotype resulting in gender-based discrimination in violation of the Equal Protection Clause.[13] A city ordinance prohibiting nudity in a public place, including exposure of the female breast, does not affect a fundamental right of freedom of speech, and therefore an equal protection challenge to the ordinance under the state constitution is subject to rational basis review; being in a state of nudity is not an inherently expressive condition, and, even assuming that the female defendants' nudity, for which they were convicted, was expressive, there was not an actual deprivation of that right.[14]

Footnotes

1 Caban v. Mohammed, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979) (holding that a state statute which permits an unwed mother, but not an unwed father, to prevent the adoption of their child by simply withholding consent to the adoption violates the Equal Protection Clause).

Two once habitual assumptions that pervaded the citizenship laws and underpinned judicial and administrative rulings, namely, that in marriage, husband is dominant, wife subordinate, and that unwed mother is the natural and sole guardian of a nonmarital child, are now untenable under equal protection principles. Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

Statute automatically granting custody to biological mothers while requiring fathers to establish presumed parenthood violates equal protection principles only if it is applied to an unwed father who has sufficiently and timely demonstrated a full commitment to his parental responsibilities. W.S. v. S.T., 20 Cal. App. 5th 132, 228 Cal. Rptr. 3d 756 (6th Dist. 2018), review denied, (Apr. 25, 2018) and cert. denied, 139 S. Ct. 325, 202 L. Ed. 2d 221 (2018).

A state statutory scheme providing that husbands, but not wives, may be required to pay alimony upon divorce is violative of equal protection. Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).

2 Miller v. Albright, 523 U.S. 420, 118 S. Ct. 1428, 140 L. Ed. 2d 575 (1998) (holding that an additional proof-of-paternity requirement imposed for citizenship by birth whenever a citizen parent of a child who is born out of wedlock and abroad is the child's father, as opposed to the mother, did not represent an unconstitutional denial of equal protection based on the sex of the citizen parent; the desire to promote early ties to United States citizen relatives and recognition that mothers and fathers of out-of-wedlock children are not similarly situated supported the requirement, whenever the citizen parent is the father, that the child be legitimated, that the father formally acknowledge his paternity, or that the father's paternity be established by a competent court prior to the child's majority); Dubay v. Wells, 506 F.3d 422, 69 Fed. R. Serv. 3d 405 (6th Cir. 2007).

3 Dubay v. Wells, 506 F.3d 422, 69 Fed. R. Serv. 3d 405 (6th Cir. 2007).

4 Burella v. City of Philadelphia, 501 F.3d 134 (3d Cir. 2007); Fedor v. Kudrak, 421 F. Supp. 2d 473 (D. Conn. 2006); Burrell v. Anderson, 353 F. Supp. 2d 55 (D. Me. 2005); Staley v. Grady, 371 F. Supp. 2d 411 (S.D. N.Y. 2005); Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008).

5 Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973).
As to military pay, allowances, and benefits, generally, see Am. Jur. 2d, Military and Civil Defense §§ 138 to 151.

6 Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971) (a provision of a state probate code, giving a mandatory preference for appointment as administrator of a decedent's estate to a male applicant over a female applicant otherwise equally qualified for appointment as being in the same entitlement class established by the probate code, violated the Equal Protection Clause).

7 Kalina v. Railroad Retirement Bd., 541 F.2d 1204 (6th Cir. 1976), judgment aff'd, 431 U.S. 909, 97 S. Ct. 2164, 53 L. Ed. 2d 220 (1977) (different treatment of spouses of male and female railroad employees in that male but not female spouses must satisfy a support test for a spouse's annuity under the Railroad Retirement Act, former 45 U.S.C.A. § 228, violated the equal protection component of the Due Process Clause).

8 Women's Liberation Union of Rhode Island v. Israel, 512 F.2d 106 (1st Cir. 1975) (a Rhode Island law that prohibited an establishment that held a certain class of liquor licenses from serving beverages to women was not rationally related to any legitimate state purpose and violated the Equal Protection Clause, despite a claim that the purpose of the statute was to protect women because "bars are rough places").
As to the sale of liquor to women, see Am. Jur. 2d, Intoxicating Liquors § 217.

9 Fortin v. Darlington Little League, Inc., 514 F.2d 344 (1st Cir. 1975) (little league baseball); Hesseltine v. State Athletic Commission, 6 Ill. 2d 129, 126 N.E.2d 631 (1955) (professional wrestling); National Organization for Women, Essex County Chapter v. Little League Baseball, Inc., 127 N.J. Super. 522, 318 A.2d 33, 66 A.L.R.3d 1247 (App. Div. 1974), aff'd, 67 N.J. 320, 338 A.2d 198 (1974).
However, the contrary has been held. Calzadilla v. Dooley, 29 A.D.2d 152, 286 N.Y.S.2d 510 (4th Dep't 1968) (professional wrestling); State v. Hunter, 208 Or. 282, 300 P.2d 455 (1956) (professional wrestling).
As to sex discrimination in school athletic programs, see § 873.

10 Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 100 S. Ct. 1540, 64 L. Ed. 2d 107 (1980).
As to the application of equal protection to workers' compensation acts, generally, see Am. Jur. 2d, Workers' Compensation § 18.

11 Longoria v. Dretke, 507 F.3d 898 (5th Cir. 2007); Fegans v. Norris, 537 F.3d 897 (8th Cir. 2008).

12 Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); City of Tucson v. Wolfe, 185 Ariz. 563, 917 P.2d 706 (Ct. App. Div. 2 1995), corrected, (Aug. 7, 1995); City of Jackson v. Lakeland Lounge of Jackson, Inc., 688 So. 2d 742, 67 A.L.R.5th 719 (Miss. 1996).

13 Free the Nipple-Fort Collins v. City of Fort Collins, Colorado, 237 F. Supp. 3d 1126 (D. Colo. 2017), aff'd, 916 F.3d 792 (10th Cir. 2019).

14 State v. Lilley, 171 N.H. 766, 204 A.3d 198 (2019), cert. denied, 140 S. Ct. 858, 205 L. Ed. 2d 456 (2020).

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16B Am. Jur. 2d Constitutional Law § 877

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 877. Proving sex discrimination

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3380, 3463

Under an equal protection analysis, parties who seek to defend a gender-based governmental action must demonstrate an exceedingly persuasive justification for that action. The burden of justification for an official classification based on gender under equal protection analysis is demanding and it rests entirely on the state.[1] When a statute, gender-neutral on its face, is challenged on the ground that its effects upon women are disproportionably adverse, a twofold inquiry is appropriate: the first question is whether the statutory classification is indeed neutral in the sense that it is not gender based. If the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination, and in the second inquiry, the impact provides an important starting point, although purposeful discrimination is the condition that offends the Constitution.[2]

The legislature may not make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class; but, because the Equal Protection Clause does not demand that a statute necessarily apply equally to all persons or require things which are different in fact to be treated in law as though they were the same, statutes are valid where the gender classification is not invidious but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances.[3]

A party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an exceedingly persuasive justification for the classification and that burden is met only by showing at least that the

classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.[4] Gender-based discrimination is unconstitutional absent a showing that the classification substantially furthers some important governmental interest.[5]

Footnotes

1 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017); U.S. v. Virginia, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996); D.M. by Bao Xiong v. Minnesota State High School League, 917 F.3d 994, 363 Ed. Law Rep. 498 (8th Cir. 2019); Free the Nipple-Fort Collins v. City of Fort Collins, Colorado, 916 F.3d 792 (10th Cir. 2019); Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, 93 F.3d 910, 113 Ed. Law Rep. 30 (D.C. Cir. 1996); Adams By and Through Adams v. Baker, 919 F. Supp. 1496, 108 Ed. Law Rep. 637 (D. Kan. 1996).
For purposes of the Equal Protection Clause, the burden is on the party seeking to uphold a statute that expressly discriminates on the basis of sex to advance an exceedingly persuasive justification for the challenged classification. Kirchberg v. Feenstra, 450 U.S. 455, 101 S. Ct. 1195, 67 L. Ed. 2d 428 (1981).
Even if stereotypes frozen into legislation have statistical support, measures that classify unnecessarily and overbroadly by gender are rejected, under equal protection principles, when more accurate and impartial lines can be drawn. Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017).

2 Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997); Collier v. Barnhart, 473 F.3d 444 (2d Cir. 2007); Keevan v. Smith, 100 F.3d 644 (8th Cir. 1996).

3 Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 101 S. Ct. 1200, 67 L. Ed. 2d 437 (1981).

4 Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090, 5 Ed. Law Rep. 103 (1982); D.M. by Bao Xiong v. Minnesota State High School League, 917 F.3d 994, 363 Ed. Law Rep. 498 (8th Cir. 2019); Free the Nipple-Fort Collins v. City of Fort Collins, Colorado, 916 F.3d 792 (10th Cir. 2019); Eline v. Town of Ocean City, Md., 382 F. Supp. 3d 386 (D. Md. 2018).

5 Kirchberg v. Feenstra, 450 U.S. 455, 101 S. Ct. 1195, 67 L. Ed. 2d 428 (1981); Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 100 S. Ct. 1540, 64 L. Ed. 2d 107 (1980).

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16B Am. Jur. 2d Constitutional Law § 878

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 878. State equal rights amendments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3380

A.L.R. Library

Construction and application of state equal rights amendments forbidding determination of rights based on sex, 90 A.L.R.3d 158

The primary purpose of an equal rights amendment (ERA) is to eliminate discrimination as between men and women as a class.[1] If equal treatment is restricted or denied on the basis of sex, the classification is discriminatory and, thus, violates the ERA of the state constitution.[2]

The states which have adopted ERAs are by no means uniform in their construction of these provisions. Construction of the equal rights amendment has ranged from an absolute or literal interpretation, through a "strict" standard interpretation to what has been called a permissive interpretation.[3] Adopting what has been called the "absolute" or "literal" interpretation, some courts have interpreted their equal rights amendments as prohibiting the government from making any distinctions based on sex,[4] although a few have permitted classifications "reasonably" based on physical characteristics unique to just one sex.[5]

In some states, courts have ruled that the State ERAs have elevated sex to a suspect class,[6] thereby invoking a strict scrutiny review when a law differentiates on the basis of gender, even though the Federal Equal Protection Clause requires only an intermediate scrutiny of such a classification.[7] Other courts construe their ERAs as permitting any classification on the basis of sex so long as the classification is reasonably related to a legitimate state interest.[8]

Footnotes

1 Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007), opinion extended after remand on other grounds, 2008 WL 3999843 (Md. Cir. Ct. 2008) and (abrogated on other grounds by, Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)).

2 Rhoades v. Department of Labor and Industries, 143 Wash. App. 832, 181 P.3d 843 (Div. 3 2008).

3 George v. George, 487 Pa. 133, 409 A.2d 1 (1979).

4 Rand v. Rand, 280 Md. 508, 374 A.2d 900, 90 A.L.R.3d 150 (1977); Com. v. Butler, 458 Pa. 289, 328 A.2d 851 (1974).

Sex is a "suspect category" for purposes of equal protection analysis under a section of the Hawaii Constitution, and classification based on sex is subject to the "strict scrutiny" test. Baehr v. Lewin, 74 Haw. 530, 74 Haw. 645, 852 P.2d 44 (1993), as clarified on reconsideration, (May 27, 1993) and (abrogated on other grounds by, Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)).

The Equal Rights Amendment of the State Declaration of Rights of Maryland did not create corresponding gender-neutral rights and obligations to all gender specific rights and obligations that had previously existed, but instead rendered those laws unenforceable and unconstitutional. Wal Mart Stores, Inc. v. Holmes, 416 Md. 346, 7 A.3d 13 (2010).

5 Beattie v. Line Mountain School Dist., 992 F. Supp. 2d 384, 306 Ed. Law Rep. 345 (M.D. Pa. 2014) (applying Pennsylvania law); Singer v. Hara, 11 Wash. App. 247, 522 P.2d 1187 (Div. 1 1974).

The Colorado ERA prohibits unequal treatment based exclusively on the circumstance of sex, social stereotypes connected with gender, and culturally induced dissimilarities; however, it does not prohibit differential treatment among the sexes when that treatment is reasonably and genuinely based on physical characteristics unique to just one sex. People v. Salinas, 191 Colo. 171, 551 P.2d 703 (1976).

6 Messina v. State, 904 S.W.2d 178 (Tex. App. Dallas 1995).

7 Lens Exp., Inc. v. Ewald, 907 S.W.2d 64 (Tex. App. Austin 1995).

8 Archer v. Mayes, 213 Va. 633, 194 S.E.2d 707 (1973).

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16B Am. Jur. 2d Constitutional Law § 879

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

a. Classifications Based on Gender

§ 879. State equal rights amendments—Application in relation to particular matters

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3380 to 3429

A.L.R. Library

Construction and application of state equal rights amendments forbidding determination of rights based on sex, 90 A.L.R.3d 158

An equal rights amendment (ERA) requires that the doctrine of paternity by estoppel be applied to mothers as well as to fathers.[1]

A statute which makes it a crime for a husband to abandon his wife without also making it a crime for the wife to abandon her husband violates the ERA, thereby invalidating the statute.[2] A state ERA is applicable to the rights and duties of a man or woman after they get married, despite the fact that the interests of the children of the marriage may be affected; thus, a statute which allows wives but not husbands to obtain divorces when certain marital misconduct has occurred is read in such a way as providing for the reciprocity of remedies for spouses and thus is constitutional.[3]

The general rule that the custody of a child of tender years or of a girl of more mature years should ordinarily be given to the mother if she was found to be fit to have custody and could supply a proper home violates the ERA.[4] Under the ERAs, the responsibility for child support rests equally upon the parents, but the burden of providing such support must be borne by each parent in accordance with the parent's ability to contribute.[5]

Even though a statute is written or applied so that only males can commit a particular crime such as rape,[6] illicit sexual relations,[7] or pandering or prostitution,[8] such statutes generally have been upheld under the ERA. Incest statutes which make the crime more serious and the punishment greater if committed by a male rather than a female have been upheld under the ERA.[9]

ERAs do not prohibit differential treatment among the sexes when that treatment is reasonably and genuinely based upon physical characteristics unique to one sex.[10] It is permissible under the ERA for a local government to allow women with young children an exemption from jury duty.[11]

The ERA requires that females be permitted to compete with males in all public school interscholastic sports, including football and wrestling.[12]

Footnotes

1 Ruth F. v. Robert B., 456 Pa. Super. 398, 690 A.2d 1171 (1997), decision aff'd, 559 Pa. 523, 741 A.2d 721 (1999).
Under an ERA, paternity statutes apply equally to both males and females, and thus process by which males can challenge paternity can also be employed by females to challenge maternity. In re Roberto d.B., 399 Md. 267, 923 A.2d 115 (2007).

2 Coleman v. State, 37 Md. App. 322, 377 A.2d 553 (1977).

3 George v. George, 487 Pa. 133, 409 A.2d 1 (1979).

4 Strand v. Strand, 41 Ill. App. 3d 651, 355 N.E.2d 47 (2d Dist. 1976); Com. ex rel. Spriggs v. Carson, 470 Pa. 290, 368 A.2d 635 (1977).
As to the preference that a mother be awarded custody of children of tender years, generally, see Am. Jur. 2d, Divorce and Separation § 797.

5 Rand v. Rand, 280 Md. 508, 374 A.2d 900, 90 A.L.R.3d 150 (1977); Conway v. Dana, 456 Pa. 536, 318 A.2d 324 (1974); Friedman v. Friedman, 521 S.W.2d 111 (Tex. Civ. App. Houston 14th Dist. 1975).

6 People v. Salinas, 191 Colo. 171, 551 P.2d 703 (1976); People v. Medrano, 24 Ill. App. 3d 429, 321 N.E.2d 97 (2d Dist. 1974); Brooks v. State, 24 Md. App. 334, 330 A.2d 670 (1975); State v. Craig, 169 Mont. 150, 545 P.2d 649 (1976).

7 Matter of Jessie C., 164 A.D.2d 731, 565 N.Y.S.2d 941 (4th Dep't 1991).

8 People v. Sherrod, 50 Ill. App. 3d 532, 8 Ill. Dec. 607, 365 N.E.2d 993 (1st Dist. 1977); Com. v. King, 374 Mass. 5, 372 N.E.2d 196 (1977).
A challenge to a prostitution statute as sexually discriminatory would not be sustained under the New Mexico ERA, where the statute was gender-neutral on its face, and where males or females could have been arrested for its violation. State v. Sandoval, 98 N.M. 417, 1982-NMCA-091, 649 P.2d 485 (Ct. App. 1982).

9 People v. Yocum, 66 Ill. 2d 211, 5 Ill. Dec. 665, 361 N.E.2d 1369 (1977).

10 Wise v. Com., Dept. of Corrections, 690 A.2d 846 (Pa. Commw. Ct. 1997).

11 Johnson v. State, 548 S.W.2d 700 (Tex. Crim. App. 1977); Archer v. Mayes, 213 Va. 633, 194 S.E.2d 707 (1973).

12 Opinion of the Justices to the House of Representatives, 374 Mass. 836, 371 N.E.2d 426 (1977); Com. By Packel v. Pennsylvania Interscholastic Athletic Ass'n, 18 Pa. Commw. 45, 334 A.2d 839 (1975); Darrin v. Gould, 85 Wash. 2d 859, 540 P.2d 882 (1975).

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16B Am. Jur. 2d Constitutional Law § 880

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 880. Personal qualifications as basis for classification, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3070, 3076

A.L.R. Library

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 A.L.R.5th 455

Personal qualifications on which classifications have been attempted include homelessness,[1] literacy,[2] alienage,[3] military service,[4] labor union membership,[5] residence,[6] property ownership,[7] and wealth or poverty.[8]

A classification is unreasonable and void which is based on such mere physical characteristics as height, weight, complexion, mentality, or other personal attributes which pertain solely to the particular person and not to any relation that that person may bear to others in human conduct and activity.[9]

The Equal Protection Clause also prohibits classification based on social attitudes, styles, or affiliations, as in the case of regulations aimed specifically at "hippies,"[10] and extends to the shared political interests of groups otherwise random and

diverse,[11] so that "fencing out" from the franchise a sector of the population because of the way it may vote is constitutionally impermissible.[12] On the other hand, discrimination against persons convicted of crimes has been sustained, as in the case of statutory provisions denying the right to vote to convicted felons,[13] or enhancing the punishment of habitual offenders.[14] However, a state constitutional provision which disenfranchised persons convicted of a misdemeanor involving moral turpitude violated the Equal Protection Clause where it had a racially discriminatory impact on blacks and was enacted with the intent of disenfranchising blacks.[15]

The Equal Protection Clause is not violated by public library rules requiring patrons to be reading, studying, or using library materials, to respect the rights of others, to avoid noisy or boisterous activities or staring or following with intent to annoy, and to leave the building if bodily hygiene is offensive so as to constitute a nuisance to others.[16]

Footnotes

1 Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242 (3d Cir. 1992).

2 State v. Woodfork, 255 La. 611, 232 So. 2d 290 (1970) (a Louisiana statute disqualifying jurors who are unable to read and write the English language did not violate due process and equal protection).
As to literacy as a qualification for voting, see Am. Jur. 2d, Elections §§ 153, 154.
As to education and literacy requirements for jury service, see Am. Jur. 2d, Jury § 150.

3 Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).
Strict scrutiny is applied in cases where the challenged action or legislation involves alienage. Donatelli v. Mitchell, 2 F.3d 508 (3d Cir. 1993).
Equal protection is denied to nonimmigrant aliens by a university's policy of denying in-state status to such aliens for the purpose of tuition, where the policy is phrased such that aliens, despite their state residency, cannot establish state domicile because they are nonimmigrant aliens. Moreno v. University of Maryland, 645 F.2d 217 (4th Cir. 1981), judgment aff'd, 458 U.S. 1, 102 S. Ct. 2977, 73 L. Ed. 2d 563, 5 Ed. Law Rep. 8 (1982).
As to citizenship as a qualification for voting, see Am. Jur. 2d, Elections § 149.
As to citizenship as a qualification to serve on a jury, see Am. Jur. 2d, Jury § 141.

4 § 895.
As to status and benefits as a veteran, generally, see Am. Jur. 2d, Veterans and Veterans' Laws §§ 1 to 198.

5 Chambers v. Owens-Ames-Kimball Co., 146 Ohio St. 559, 33 Ohio Op. 60, 67 N.E.2d 439, 165 A.L.R. 1373 (1946).

6 § 894.

7 Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970) (holding that a statute limiting the members of a school board to freeholders violated the Equal Protection Clause because there is no rational state interest requiring such a classification).
A state statute allowing only landowners to vote in a referendum concerning the establishment of a watershed improvement district, and allowing such district to be created only if a majority of votes cast, representing a majority of acreage in the district, favor its creation, did not violate the Equal Protection Clause. Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist., 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973).
As to property ownership as a qualification for voting, see Am. Jur. 2d, Elections § 157.
As to property ownership as a condition of eligibility to public office, see Am. Jur. 2d, Public Officers and Employees § 71.

8 § 896.

9 Mansur v. City of Sacramento, 39 Cal. App. 2d 426, 103 P.2d 221 (3d Dist. 1940).
As to health and physical fitness as a type of selection criteria for employment, see Am. Jur. 2d, Job Discrimination §§ 393 to 408.
As to appearance and grooming as a type of selection criteria for employment, see Am. Jur. 2d, Job Discrimination §§ 436 to 443.

10 U. S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973).
However, a zoning ordinance prohibiting occupancy of one family dwelling by more than two unrelated persons, but allowing occupancy by any number of related persons, was not unconstitutional. Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974).

11 Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974) (independent political candidates); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

12 Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969); Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675 (1965).

13 Richardson v. Ramirez, 418 U.S. 24, 94 S. Ct. 2655, 41 L. Ed. 2d 551 (1974); Green v. Board of Elections of City of New York, 380 F.2d 445 (2d Cir. 1967).
As to disqualification or disenfranchisement for conviction of a crime, see Am. Jur. 2d, Elections §§ 168 to 172.
As to disabilities resulting from a conviction of a crime, generally, see Am. Jur. 2d, Criminal Law §§ 1197 to 1207.

14 Am. Jur. 2d, Habitual Criminals and Subsequent Offenders § 14.

15 Hunter v. Underwood, 471 U.S. 222, 105 S. Ct. 1916, 85 L. Ed. 2d 222 (1985).

16 Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242 (3d Cir. 1992).

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16B Am. Jur. 2d Constitutional Law § 881

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 881. Race, color, or national origin as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3078, 3250 to 3310

A.L.R. Library

Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1

What constitutes reverse or majority race or national origin discrimination violative of Federal Constitution or statutes—nonemployment cases, 152 A.L.R. Fed. 1

Construction and application of sec. 902 of Civil Rights Act of 1964 (42 U.S.C.A. sec. 2000h-2) authorizing United States to intervene in private action for relief from denial of equal protection of laws under Fourteenth Amendment on account of race, color, religion, sex, or national origin, 19 A.L.R. Fed. 623

While the original intent of the Equal Protection Clause was to protect and preserve the rights of recently freed slaves, the Clause is now viewed as a protection of the equal rights of all United States citizens and resident aliens regardless of their race, color, or national origin.[1] Thus, all classifications of persons on the basis of race, color, or national origin are not condemned by

the Equal Protection Clause.[2] The Equal Protection Clause does not permit discrimination against white persons any more than it permits discrimination against minorities in the absence of a compelling state interest that will pass the strict scrutiny test.[3]

The 14th Amendment expresses a definite national policy against discrimination on the basis of race or color.[4] The moral imperative of racial neutrality is the driving force of the Equal Protection Clause, and racial classifications are permitted only as a last resort.[5] Only the most exceptional circumstances can excuse discrimination on such a basis in the face of the Equal Protection Clause.[6]

Whenever the government treats any person unequally because of such person's race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection.[7] All racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized, and this standard of review is not dependent on the race of those burdened or benefited by a particular classification; thus, any person of whatever race has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny.[8] Mere recitation of benign or legitimate purpose for racial classification is entitled to little or no weight under equal protection analysis.[9]

Footnotes

1 Hines v. Mayor and Town Council of Ahoskie, 998 F.2d 1266 (4th Cir. 1993) (holding that the equal protection rights of white voters were violated by an election plan proposed by black voters under the Voting Rights Act which would have effectively canceled out the voting strength of the white majority since the only motivation for the plan was racial concerns).

2 Whren v. U.S., 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (the Constitution prohibits selective enforcement of the law based on considerations, such as race); City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989); Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983).

If a state law or policy makes a classification based on race, national origin, or alienage, such law violates the Equal Protection Clause unless the state can demonstrate that the policy is necessary to further a compelling governmental interest and narrowly tailored to that end. Intercommunity Justice and Peace Center v. Norman, 402 F. Supp. 3d 405 (S.D. Ohio 2019).

As to classification based on minority or female or disadvantaged business status, see § 906.

As to job discrimination based on race or color, generally, see Am. Jur. 2d, Job Discrimination §§ 114 to 122.

As to job discrimination based on national origin, generally, see Am. Jur. 2d, Job Discrimination §§ 146 to 155.

3 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

4 Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976); Jefferson v. Hackney, 406 U.S. 535, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

5 Bartlett v. Strickland, 556 U.S. 1, 129 S. Ct. 1231, 173 L. Ed. 2d 173, 51 A.L.R. Fed. 2d 709 (2009).

The central mandate of the Equal Protection Clause demands racial and nationality neutrality in all governmental decision making. Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995) (holding that under the Equal Protection Clause, racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination; this rule obtains with equal force regardless of the race of those burdened or benefited by a particular classification).

6 Oyama v. California, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. 249 (1948); Allison v. City of Akron, 45 Ohio App. 2d 227, 74 Ohio Op. 2d 343, 343 N.E.2d 128 (9th Dist. Summit County 1974).

Laws classifying individuals by race or religious beliefs always fail under the state Constitution's Equal Protection Clause. State v. Granger, 982 So. 2d 779 (La. 2008).

7 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

8 Gratz v. Bollinger, 539 U.S. 244, 123 S. Ct. 2411, 156 L. Ed. 2d 257, 177 Ed. Law Rep. 851 (2003); Hinds County Republican Party v. Hinds County, Mississippi, 2020 WL 104676 (S.D. Miss. 2020).

9 Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

"Racially discriminatory purpose" means that the decisionmaker adopted the challenged action at least partially because the action would benefit or burden an identifiable group; thus, the mere awareness or consideration of race should not be mistaken for racially discriminatory intent or for proof of an equal protection violation. Doe ex rel. Doe v. Lower Merion School Dist., 665 F.3d 524, 275 Ed. Law Rep. 526 (3d Cir. 2011).

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16B Am. Jur. 2d Constitutional Law § 882

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Constitutional Law
Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 882. Race, color, or national origin as basis for classification—Proving discrimination

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3078, 3250 to 3310

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Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1

What constitutes reverse or majority race or national origin discrimination violative of Federal Constitution or statutes—nonemployment cases, 152 A.L.R. Fed. 1

Construction and application of sec. 902 of Civil Rights Act of 1964 (42 U.S.C.A. sec. 2000h-2) authorizing United States to intervene in private action for relief from denial of equal protection of laws under Fourteenth Amendment on account of race, color, religion, sex, or national origin, 19 A.L.R. Fed. 623

For purposes of determining the validity, under the Equal Protection Clause of the 14th Amendment, of classifications based explicitly on race, color, or national origin, all such classifications imposed by whatever federal, state, or local governmental actor must be analyzed by a reviewing court under strict scrutiny—that is, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.[1] Even in the limited circumstance when drawing

racial distinctions is permissible to further a compelling state interest, government is still constrained under the Equal Protection Clause in how it may pursue that end: the means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose.[2] The purpose of the narrow tailoring requirement when determining whether racial distinctions are permissible under the Equal Protection Clause to further a compelling state interest is to ensure that the means chosen fit the compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.[3]

A racial classification regardless of its purported motivation is presumptively invalid and can be upheld only upon an extraordinary justification, and such applies as well to a classification that is ostensibly neutral but which is an obvious pretext for racial discrimination.[4] However, even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.[5] A law that is facially neutral with respect to race classification warrants strict scrutiny under the Equal Protection Clause only if it can be proved that the law was motivated by a racial purpose or object or if it is unexplainable on grounds other than race.[6] Unless there is a clear pattern that a statute or ordinance is impacting one race more than another, impact alone is not determinative of whether an invidious discriminatory purpose was a motivating factor in adopting a statute or ordinance as required to establish that the statute or ordinance violated the Equal Protection Clause, and courts must look to other evidence, such as the historical background behind the state's action and the specific sequence of events in the state's decision-making process.[7] Context matters when reviewing race-based governmental action under the Equal Protection Clause.[8]

Although proof of racially discriminatory intent or purpose is usually required to show a violation of the Equal Protection Clause[9] when racial classifications in a law are explicit, no inquiry into legislative purpose is necessary to determine whether such law violates the Equal Protection Clause.[10] A plaintiff seeking to make out an equal protection violation on the basis of racial discrimination must show purpose, but disparate impact and foreseeable consequences, without more, do not establish a constitutional violation; nevertheless, actions having foreseeable and anticipated disparate impacts are relevant to prove the ultimate fact of forbidden purpose.[11] If a defendant challenging legislation as being racially discriminatory on equal protection grounds does not allege actual discriminatory intent, the deferential "rational basis" standard is used to review the challenged legislative scheme; if, on the other hand, the defendant alleges and demonstrates that the legislature passed the law with a discriminatory purpose, review is then conducted under the demanding "strict scrutiny" standard.[12] In the context of an equal protection claim, inquiry into racially discriminatory intent is practical; what the legislature or any official entity is "up to" may be plain from the results its actions achieve, or the results they avoid, and once it is shown that a decision was motivated at least in part by racially discriminatory purpose, the burden shifts to the defendant to show that the same result would have been reached even without consideration of race.[13]

Footnotes

1 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995); Billish v. City of Chicago, 989 F.2d 890 (7th Cir. 1993).
As to the strict scrutiny test, generally, see § 854.

2 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

3 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

4 Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); Lewis v. Ascension Parish School Bd., 72 F. Supp. 3d 648, 318 Ed. Law Rep. 939 (M.D. La. 2014), aff'd, 806 F.3d 344, 324 Ed. Law Rep. 78 (5th Cir. 2015).

5 Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); U.S. v. Spotted Elk, 548 F.3d 641 (8th Cir. 2008).

A law that is neutral on its face may be unconstitutional if motivated by a discriminatory purpose; in determining whether such a purpose is the motivating factor, a racially disproportionate effect of an official action provides an important starting point. Crawford v. Board of Educ. of City of Los Angeles, 458 U.S. 527, 102 S. Ct. 3211, 73 L. Ed. 2d 948, 5 Ed. Law Rep. 82 (1982).

As to the prohibition against purposeful or intentional discrimination, generally, see § 828.

6 Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

A facially neutral statute enacted to further unlawful discrimination violates the Equal Protection Clause if (1) discrimination was a substantial or motivating factor in the government's enactment of the law, and (2) the government cannot rebut that claim by showing that the provision would have been enacted in the absence of any racially discriminatory motive. Young Apartments, Inc. v. Town of Jupiter, FL, 529 F.3d 1027 (11th Cir. 2008).

7 Young Apartments, Inc. v. Town of Jupiter, FL, 529 F.3d 1027 (11th Cir. 2008).

8 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

9 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003).

Actions of a city in submitting to voters pursuant to the requirements of its charter a facially neutral referendum petition calling for the repeal of a municipal housing ordinance authorizing construction of low-income housing complex did not reflect the intent required to support equal protection liability; by placing the referendum on the ballot, the city did not enact the referendum and so could not be said to have given effect to the voters' allegedly discriminatory motives for supporting the petition, and there was no evidence that the city's official acts were themselves motivated by racial animus. City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003).

10 Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

11 Coleman v. Court of Appeals of Maryland, 566 U.S. 30, 132 S. Ct. 1327, 182 L. Ed. 2d 296 (2012); Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979); U.S. v. Clary, 34 F.3d 709 (8th Cir. 1994).

Although disparate impact may be relevant evidence of racial discrimination, such evidence alone is insufficient even where the 14th Amendment subjects state action to strict scrutiny. Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001).

12 U.S. v. Moore, 54 F.3d 92 (2d Cir. 1995).

As to the rational basis test, see §§ 850 to 852.

As to the strict scrutiny test, see § 854.

13 Davis v. City of New York, 959 F. Supp. 2d 324 (S.D. N.Y. 2013).

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16B Am. Jur. 2d Constitutional Law § 883

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 883. Race, color, or national origin as basis for classification—Particular matters

Topic Summary | Correlation Table | References

West's Key Number Digest

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Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1

What constitutes reverse or majority race or national origin discrimination violative of Federal Constitution or statutes—nonemployment cases, 152 A.L.R. Fed. 1

Construction and application of sec. 902 of Civil Rights Act of 1964 (42 U.S.C.A. sec. 2000h-2) authorizing United States to intervene in private action for relief from denial of equal protection of laws under Fourteenth Amendment on account of race, color, religion, sex, or national origin, 19 A.L.R. Fed. 623

All laws that classify citizens on the basis of race, including racially gerrymandered districting schemes, are constitutionally suspect and must be strictly scrutinized under the Equal Protection Clause of the 14th Amendment.[1] The Equal Protection Clause prohibits a state, without sufficient justification, from separating its citizens into different voting districts on the basis of race.[2] For purposes of determining whether a districting law is racially motivated as would violate the Equal Protection Clause,

the task of assessing the jurisdiction's motivation is an inherently complex endeavor, one requiring the trial court to perform a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.[3]

The Equal Protection Clause forbids a prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the state's case against a black defendant.[4]

The strict scrutiny standard of review rather than the "reasonably related to legitimate penological interest" standard governed an inmate's equal protection challenge to a state corrections department's unwritten policy of placing new or transferred inmates double-celled during an initial 60-day evaluation with cellmates of the same race; the corrections officials had to demonstrate that the policy assertedly adopted to prevent violence caused by racial gangs was narrowly tailored to address the necessities of prison security and discipline.[5]

School districts' use of racial classifications in their student assignment plans which were challenged under the Equal Protection Clause were not narrowly tailored to their asserted goal of fostering educational and broader socialization benefits through a racially diverse learning environment particularly where the level of racial diversity sought by each plan was tied specifically to each district's racial demographics, not to any particular pedagogic concept and thus was directed only to the impermissible goal of racial balance.[6] Any interest in remedying the effects of past intentional discrimination could not serve as a compelling interest justifying a school board's use of racial classification in a student assignment plan for elementary school assignments and transfer requests which was challenged under the Equal Protection Clause where, although the district's schools were previously segregated by law and then subject to a desegregation decree, the decree had since been dissolved upon finding that the district had achieved unitary status.[7]

If a school district can demonstrate that demographic or other external factors have substantially caused the racial imbalances in its schools, it overcomes the presumption that segregative intent, either past or present, is the cause, and there is no equal protection violation.[8]

A state university's interest in achieving educational diversity could constitute a compelling state interest capable of supporting narrowly tailored means for purposes of determining whether that university's policy of using race in undergraduate admissions decisions violated the Equal Protection Clause of the 14th Amendment.[9] In determining whether the means chosen by a university to attain diversity in admissions are narrowly tailored to that goal, as required by the Equal Protection Clause, the reviewing court must verify that it is necessary for the university to use race to achieve educational benefits of diversity; this involves careful judicial inquiry into whether the university could achieve sufficient diversity without using racial classifications.[10] A state constitutional amendment prohibiting racial preferences by state universities or other public institutions did not violate the Equal Protection Clause since the Equal Protection Clause does not bar official conduct that bans preferential treatment on the basis of race.[11] Because racial characteristics so seldom provide a relevant basis for disparate treatment, race may not be considered by a public university as part of an affirmative action admissions program unless the admissions process can withstand strict scrutiny under the Equal Protection Clause.[12] A public university that uses race as part of an affirmative action admissions program bears the burden, in an action challenging the program on equal protection grounds, of proving a nonracial approach would not promote its interest in the educational benefits of diversity about as well and at tolerable administrative expense.[13]

Footnotes

1 Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

2 Cooper v. Harris, 137 S. Ct. 1455, 197 L. Ed. 2d 837 (2017); Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788, 197 L. Ed. 2d 85 (2017) (holding that A plaintiff alleging racial gerrymandering in electoral districting, in violation of the Equal Protection Clause, bears the burden to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district).

3 Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

4 Walker v. Girdich, 410 F.3d 120 (2d Cir. 2005).

As to race as a qualification to be a juror, see Am. Jur. 2d, Jury § 146.

5 Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005).

6 Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701, 127 S. Ct. 2738, 168 L. Ed. 2d 508, 220 Ed. Law Rep. 84 (2007).

7 Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701, 127 S. Ct. 2738, 168 L. Ed. 2d 508, 220 Ed. Law Rep. 84 (2007).

8 Holton v. City of Thomasville School Dist., 490 F.3d 1257, 222 Ed. Law Rep. 85 (11th Cir. 2007), as clarified on denial of reh'g, 521 F.3d 1318 (11th Cir. 2008).

As to desegregation in education, generally, see Am. Jur. 2d, Civil Rights §§ 290 to 318.

9 Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304, 177 Ed. Law Rep. 801 (2003) (holding that a state university law school's race-conscious admissions program was narrowly tailored to serve its compelling interest in obtaining the educational benefits that flow from a diverse student body, and thus, such race-conscious policy did not violate the Equal Protection Clause; although the plan used race as a plus factor in law school admissions decisions, the law school engaged in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment, and in addition, race-neutral alternatives, such as a lottery system or decreasing the emphasis on grade point average (GPA) and Law School Admission Test (LSAT) scores, were considered and would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both).

As to desegregation in education, generally, see Am. Jur. 2d, Civil Rights §§ 290 to 318.

As to desegregation of faculties, generally, see Am. Jur. 2d, Civil Rights §§ 325 to 328.

As to admission at state colleges and universities, generally, see Am. Jur. 2d, Colleges and Universities § 18.

10 Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

11 Coalition to Defend Affirmative Action v. Granholm, 473 F.3d 237, 215 Ed. Law Rep. 569, 2006 FED App. 0476P (6th Cir. 2006).

12 Fisher v. University of Texas at Austin, 136 S. Ct. 2198, 195 L. Ed. 2d 511, 333 Ed. Law Rep. 1 (2016).

University receives no judicial deference in its choice of means to attain its goal of racial diversity in admissions, rather, it is for courts to ensure that means chosen are specifically and narrowly framed to accomplish university's asserted purpose, as required by Equal Protection Clause. Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474, 293 Ed. Law Rep. 588 (2013).

13 Fisher v. University of Texas at Austin, 136 S. Ct. 2198, 195 L. Ed. 2d 511, 333 Ed. Law Rep. 1 (2016).

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16B Am. Jur. 2d Constitutional Law § 884

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 884. Religion as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

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State action which treats one religion differently from another will almost always be invidious discrimination in violation of the Equal Protection Clause, although the invidiousness of religious discrimination will vary depending upon the surrounding context.[1] Conduct that is based on religious rights is a distinction based on a suspect classification, requiring strict scrutiny review of whether conduct violates the Equal Protection Clause.[2] If claimants asserting an equal protection violation can demonstrate intentional discrimination on the basis of religion, the government action is subject to strict judicial scrutiny.[3] To evaluate plaintiffs' equal protection claim, the district court must first determine whether the challenged policy on its face prefers any religious denomination; if it does, then strict scrutiny applies, and if it does not, then for strict scrutiny to apply plaintiffs must show either that the policy was adopted with discriminatory intent, or that it led to a pattern of disparate outcomes

from which unconstitutional discriminatory intent could be inferred.[4] Heightened scrutiny is applicable to a statute that applies selectively to a religious activity only if the plaintiff can show that the basis for the distinction was religious, not secular; if the basis for the distinction is secular, then the court reviews the statute to determine whether it classifies persons it affects in a manner rationally related to legitimate governmental objectives.[5] Despite the rule prohibiting classifications based on religion where a statute is neutral on its face and motivated by the permissible purpose of limiting governmental interference with the exercise of religion, there is no justification for applying strict scrutiny for equal protection analysis purposes to a statute that passes the *Lemon* test; the proper inquiry is whether Congress has chosen a rational classification to further a legitimate end.[6]

As applied to the nonprofit activities of religious employers, the provision of the Civil Rights Acts exempting religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion was rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions, and thus, the exemption did not violate the Equal Protection Clause.[7]

Application of the Fair Labor Standards Act to a religious foundation and workers in its commercial activities does not deny equal protection on the basis of differences between treatment of those workers and the government's treatment of its own volunteer workers, as Congress could rationally have concluded that minimum wage coverage of its volunteers is not required to protect the volunteers or to prevent unfair competition with private employers.[8] A taxpayer's equal protection rights were not violated by a statute denying a self-employment Social Security tax exemption to a taxpayer who had religious objections to the Social Security system but who did not belong to a religious organization with its own welfare system since the basis for the exemption was to ensure that all persons were covered by a welfare plan and since the justification for the action was rationally related to legitimate governmental objectives.[9]

An elementary school's restriction of a mother's effort to read Bible passages aloud to students in her son's kindergarten classroom as part of a curricular "show and tell" type activity did not violate the mother's or son's equal protection rights; the school's action was in furtherance of a legitimate educational objective of avoiding the promotion of religion generally in the classroom.[10] A school district did not violate a public high school student's rights under the Equal Protection Clause by requiring her, as a condition of receiving her diploma, to publicly apologize for making a valedictory speech at graduation discussing her religious views without the principal's prior approval, absent evidence that the student was treated differently from any similarly situated person.[11]

A municipality's denial of a citizen's request to place a nativity scene or creche on a grassy area owned by the municipality alongside a menorah and sailboats violated the citizen's equal protection rights under the 14th Amendment since the municipality denied the citizen access to a public forum for religious expression based on the content and viewpoint of her religious expression but allowed an Orthodox Jewish synagogue to display a menorah on that area for religious expression.[12]

Footnotes

1 Hsu By and Through Hsu v. Roslyn Union Free School Dist. No. 3, 85 F.3d 839, 109 Ed. Law Rep. 1145 (2d Cir. 1996).
A synagogue stated a claim that a municipality violated its equal protection rights through allegations that similarly situated houses of worship were granted special exceptions to carry out services in single-family homes located in residentially zoned areas, while the synagogue was not and that the police were ordered to ticket vehicles parked on the synagogue's side of the street. Hollywood Community Synagogue, Inc. v. City of Hollywood, Fla., 430 F. Supp. 2d 1296 (S.D. Fla. 2006).
As to religious freedom, see §§ 424 to 457.
As to religious or moral beliefs as qualifications for voting, see Am. Jur. 2d, Elections § 155.

As to job discrimination based on religion or creed, see Am. Jur. 2d, Job Discrimination §§ 123 to 133.
As to religious belief as a qualification to be a juror, see Am. Jur. 2d, Jury § 152.
As to religious beliefs or practices as affecting eligibility or qualification for a public office or employment, see Am. Jur. 2d, Public Officers and Employees § 69.
As to religious societies, generally, see Am. Jur. 2d, Religious Societies §§ 1 to 57.

2 Spirit of Aloha Temple v. County of Maui, 409 F. Supp. 3d 889 (D. Haw. 2019).

3 New Hope Family Services, Inc. v. Poole, 387 F. Supp. 3d 194 (N.D. N.Y. 2019).

4 In re Navy Chaplaincy, 323 F. Supp. 3d 25 (D.D.C. 2018).

5 Olsen v. C.I.R., 709 F.2d 278 (4th Cir. 1983); Droz v. C.I.R., 48 F.3d 1120 (9th Cir. 1995), as amended on denial of reh'g, (June 1, 1995).
A citizen failed to state a claim against the United States under the Fourteenth Amendment premised on alleged misconduct of a United States Postal Service (USPS) employee, who citizen alleged deliberately, intentionally, and unconstitutionally discriminated against the citizen based on the citizen's Islamic religious beliefs, physical disabilities, or race, denying the citizen equal protection of the law; the citizen merely alleged that the employee would not let him use the Post Office restroom or call emergency medical services on his behalf, which did not suggest that the employee acted with a discriminatory purpose. Muhammad v. United States, 300 F. Supp. 3d 257 (D.D.C. 2018).

6 Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987); Hsu By and Through Hsu v. Roslyn Union Free School Dist. No. 3, 85 F.3d 839, 109 Ed. Law Rep. 1145 (2d Cir. 1996).
As to the *Lemon* test, see § 430.

7 Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987).

8 Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

9 Droz v. C.I.R., 48 F.3d 1120 (9th Cir. 1995), as amended on denial of reh'g, (June 1, 1995).

10 Busch v. Marple Newtown School Dist., 567 F.3d 89, 244 Ed. Law Rep. 1023 (3d Cir. 2009), as amended, (June 5, 2009).

11 Corder v. Lewis Palmer School Dist. No. 38, 566 F.3d 1219, 244 Ed. Law Rep. 994 (10th Cir. 2009).

12 Snowden v. Town of Bay Harbor Islands, Florida, 358 F. Supp. 2d 1178 (S.D. Fla. 2004).

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16B Am. Jur. 2d Constitutional Law § 885

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Constitutional Law
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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 885. Sexual orientation as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3082, 3430 to 3446

A.L.R. Library

Discrimination on Basis of Person's Transgender or Transsexual Status as Violation of State or Local Law, 96 A.L.R.6th 189

Validity and Application of Enactment Prohibiting Discrimination by Governmental Contractors on Basis of Sexual Orientation, 8 A.L.R.6th 667

Federal and State Constitutional Provisions and State Statutes as Prohibiting Employment Discrimination Based on Heterosexual Conduct or Relationship, 123 A.L.R.5th 411

Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R.5th 391

Discrimination on Basis of Person's Transgender or Transsexual Status as Violation of Federal Law, 84 A.L.R. Fed. 2d 1

Refusal to hire, or dismissal from employment, on account of plaintiff's sexual lifestyle or sexual preference as violation of Federal Constitution or federal civil rights statutes, 42 A.L.R. Fed. 189

Trial Strategy

Custody and Visitation of Children by Gay and Lesbian Parents, 64 Am. Jur. Proof of Facts 3d 403
Employer Liability for Same-Sex Harassment, 61 Am. Jur. Proof of Facts 3d 1
Proof of Employer Liability for Sexual Harassment Claims Under Title VII of the Civil Rights Act of 1964, 52 Am. Jur. Proof of Facts 3d 1
Employment Handicap Discrimination Based on Gender Dysphoria (Transsexualism), 25 Am. Jur. Proof of Facts 3d 415

Forms

Forms relating to sexual discrimination, generally, see Am. Jur. Pleading and Practice Forms, Civil Rights [Westlaw® Search Query]

Law Reviews and Other Periodicals

Barry, A Bare Desire to Harm: Transgender People and the Equal Protection Clause, 57 B.C. L. Rev. 507 (2016)
Wickliffe, Civil Rights—Answering the "Million Dollar" Question: The Meaning of "Sex" for the Purposes of Title IX, Title VII, and the Equal Protection Clause, and Its Impact on Transgender Students' Membership in Fraternal Organizations, 42 U. Ark. Little Rock L. Rev. 327 (2020)

Homosexuality is not a suspect or quasi-suspect classification for the purpose of equal protection analysis,[1] and while homosexuals are protected by the Equal Protection Clause,[2] statutes or regulations making classifications on the basis of homosexuality or homosexual conduct are analyzed under the rational relationship test, not the strict scrutiny test.[3] A state violates the Equal Protection Clause by creating a disadvantage for homosexuals without a rational relationship to a legitimate government aim.[4] The rational basis test is applied to an equal protection challenge based on alleged dissimilar treatment between heterosexual and homosexual persons.[5] The exercise of the freedom of gay persons and gay couples, on terms equal to others, must be given great weight and respect by the courts.[6] The exclusion of same-sex couples from the possibility of qualifying for workers' compensation death benefits was not substantially related to the state's goal of cost saving, supporting same-sex partner's state law equal protection challenge to denial of benefits following worker's death in course of employment; the number of cases involving surviving same-sex partners would likely be limited, since total number of death claims in the state was small and percentage of same-sex couple households within the state was less than 1%.[7] Even though a state constitution recognizes gender as a specific class, it does not separately recognize sexual orientation as a protected class, and thus sexual orientation does not provide an independent basis for applying heightened scrutiny examination to statutes discriminating on the basis of sexual orientation.[8]

A transsexual[9] and, in particular, a transsexual prisoner[10] is not a member of a protected class under the Equal Protection Clause. A high school's practice of requiring transgender students to use bathrooms not conforming to their gender identity was a sex-based classification subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment, where the practice could not be stated without referencing sex and the practice treated transgender students differently.[11] The policy of the board of education barring a person from the boys' locker rooms who was designated female at birth but had male gender identity warranted heightened scrutiny, which required the board on the claim under the Equal Protection Clause to show that justification for the classification was exceedingly persuasive, since the policy was a sex-based classification and transgender status itself was at least a quasi-suspect classification.[12]

Caution:

Some courts have held that sexual orientation is a suspect[13] or quasi-suspect classification,[14] and thus, classifications that discriminate against gay persons are to be reviewed under the intermediate scrutiny standard.

The Equal Protection Clause was held not violated by a city's decision not to rehire a laid off police officer as the result of information indicating that he might have engaged in illicit homosexual activities in restrooms at a state university several years before he began his employment; the city's removal of the officer from its civil service reemployment list was held rationally related to the legitimate governmental purpose of protecting the police department from acts prejudicial to departmental service and contrary to the public interest.[15] A homosexual employee's claim that he was discharged by the Central Intelligence Agency (CIA) in violation of his equal protection rights failed where the discharge was seen to be rationally related to a legitimate government interest in collecting foreign intelligence and protecting the nation's secrets. The CIA was held to have a legitimate concern about the employee's trustworthiness due to his hiding of information about his involvement in homosexual activity, despite his suspecting or knowing that the CIA considered such involvement to be a matter of security significance.[16]

A statute providing that it is a crime against nature for a human being to solicit another with intent to engage in any unnatural carnal copulation for compensation did not facially discriminate against gay men and lesbians; the conduct punished by the statute was not unique to gay men and lesbians, and heterosexuals could be convicted under this statute.[17] A statute which punished heterosexual sodomy between adults and children less severely than homosexual sodomy between adults and children violated the equal protection provisions under the Federal and State Constitutions; no evidence justified the position that homosexual sexual activity was more harmful to minors than adults, no basis existed to believe that adults who engage in voluntary sex with minors who are the same sex would have a higher tendency to be more coercive than adults who engage in voluntary sex with minors of the opposite sex, and no evidence indicated that the prohibited sexual activities would be more likely to transmit disease when engaged in by homosexuals than by heterosexuals.[18]

Footnotes

1 Town of Ball v. Rapides Parish Police Jury, 746 F.2d 1049 (5th Cir. 1984); Fletcher v. Little, 5 F. Supp. 3d 655 (D. Del. 2013), aff'd on other grounds, 639 Fed. Appx. 85 (3d Cir. 2015); Selland v. Perry, 905 F. Supp.

260 (D. Md. 1995), aff'd, 100 F.3d 950 (4th Cir. 1996); Fuller v. Rich, 925 F. Supp. 459 (N.D. Tex. 1995), aff'd in part, 91 F.3d 138 (5th Cir. 1996); Watson v. Perry, 918 F. Supp. 1403 (W.D. Wash. 1996), aff'd, 124 F.3d 1126 (9th Cir. 1997); Rutgers Council of AAUP Chapters v. Rutgers, The State University, 298 N.J. Super. 442, 689 A.2d 828, 116 Ed. Law Rep. 731 (App. Div. 1997).

2 Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539 (1996) (holding that the Equal Protection Clause was violated by a state constitutional amendment that prohibited all legislative, executive, or judicial action at any level of state or local government designed to protect homosexual persons from discrimination; the amendment had the peculiar property of imposing a broad and undifferentiated disability on a single named group, and it lacked a rational relationship to legitimate state interests).

3 Price-Cornelison v. Brooks, 524 F.3d 1103 (10th Cir. 2008); Hrynda v. U.S., 933 F. Supp. 1047 (M.D. Fla. 1996); Rutgers Council of AAUP Chapters v. Rutgers, The State University, 298 N.J. Super. 442, 689 A.2d 828, 116 Ed. Law Rep. 731 (App. Div. 1997) (holding that classifications based on sexual preferences are ordinarily not suspect for equal protection purposes).

As to the rational basis test, see §§ 850 to 852.

4 Hurley v. Tupelo Public School District, 152 F. Supp. 3d 581, 332 Ed. Law Rep. 62 (N.D. Miss. 2015).

5 Sheardown v. Guastella, 324 Mich. App. 251, 920 N.W.2d 172 (2018).

6 Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018).

Stigmatic injury alleged by lesbian, gay, bisexual, transgender (LGBT), and unmarried persons did not constitute injury-in-fact required for standing to bring an action challenging a state statute that prohibited discrimination against citizens holding religious beliefs reflecting disapproval of LGBT and unmarried persons as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment, since none alleged they were personally subjected to current or impending discriminatory treatment. Barber v. Bryant, 860 F.3d 345 (5th Cir. 2017), cert. denied, 138 S. Ct. 652, 199 L. Ed. 2d 531 (2018) and cert. denied, 138 S. Ct. 671, 199 L. Ed. 2d 535 (2018).

7 Harris v. Millenium Hotel, 330 P.3d 330 (Alaska 2014).

8 D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

9 Etsitty v. Utah Transit Authority, 502 F.3d 1215 (10th Cir. 2007).

10 Brown v. Zavaras, 63 F.3d 967 (10th Cir. 1995).

11 J.A.W. v. Evansville Vanderburgh School Corporation, 396 F. Supp. 3d 833, 370 Ed. Law Rep. 261 (S.D. Ind. 2019).

12 M.A.B. v. Board of Education of Talbot County, 286 F. Supp. 3d 704 (D. Md. 2018).

13 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

The appropriate level of scrutiny to use when reviewing statutory classifications based on sexual orientation in the context of an equal protection claim is heightened scrutiny, in light of lesbians and gay men having experienced a long history of discrimination, sexual orientation having no relevance to a person's ability to contribute to society, sexual orientation being so fundamental to one's identity that a person should not be required to abandon it, and gay men and lesbians remaining a politically vulnerable minority. Golinski v. U.S. Office of Personnel Management, 824 F. Supp. 2d 968 (N.D. Cal. 2012) (further holding that the Defense of Marriage Act (DOMA) provision, defining "marriage" as between a man and a woman for purposes of federal law, was not substantially related to an important government interest, and therefore failed to satisfy heightened scrutiny under the Equal Protection Clause and was unconstitutional as applied to a federal employee, who was a lesbian married to someone of the same sex).

14 Kerrigan v. Commissioner of Public Health, 289 Conn. 135, 957 A.2d 407 (2008); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

As to the intermediate scrutiny test, see § 853.

15 Delahoussaye v. City of New Iberia, 937 F.2d 144, 68 Ed. Law Rep. 575 (5th Cir. 1991).

As to sexual orientation as a basis for protection from sex discrimination, see Am. Jur. 2d, Job Discrimination § 138.

16 Doe v. Gates, 981 F.2d 1316 (D.C. Cir. 1993).

17 State v. Baxley, 656 So. 2d 973 (La. 1995).

18 State v. Limon, 280 Kan. 275, 122 P.3d 22 (2005).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 886. Sexual orientation as basis for classification—Marriage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3438

A.L.R. Library

Marriage Between Persons of Same Sex—United States and Canadian Cases, 1 A.L.R. Fed. 2d 1

Trial Strategy

Validity of Marriage, 177 Am. Jur. Proof of Facts 3d 111

The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.[1] There is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its

same-sex character.[2] The Constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite-sex couples.[3] A state may not exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.[4] Thus, a state statute, which generally required the name of the mother's male spouse to appear on the child's birth certificate when the mother conceived the child by means of artificial insemination but allowed omission of the mother's female spouse from the child's birth certificate, denied married same-sex couples access to the constellation of benefits that the state linked to marriage, and thus was unconstitutional to the extent that the statute treated same-sex couples differently from opposite-sex couples; same-sex parents lacked the same right as opposite-sex parents to be listed on the child's birth certificate, and the state chose to make its birth certificates more than a mere marker of biological relationships by giving married parents a form of legal recognition that was not available to unmarried parents.[5]

The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality, and this is true for all persons, whatever their sexual orientation.[6]

Under the equal protection guarantee of a state constitution, committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite-sex couples.[7]

Footnotes

1 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015) (stating that the right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone; they rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era); Rosenbrahn v. Daugaard, 799 F.3d 918 (8th Cir. 2015); Chaisson v. State, Department of Health and Hospitals through Registrar of Vital Records, 239 So. 3d 1074 (La. Ct. App. 4th Cir. 2018), writ denied, 243 So. 3d 567 (La. 2018).

2 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

3 Pavan v. Smith, 137 S. Ct. 2075, 198 L. Ed. 2d 636 (2017).

The Defense of Marriage Act (DOMA's) definition of "marriage," as only as a legal union between a man and a woman and "spouse" only as a person of opposite sex who was a husband or wife, was unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment. U.S. v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013), referring to 1 U.S.C.A. § 7.

The surviving spouse of a same-sex couple had the right to establish, through a declaratory judgment action, the existence of a common-law marriage prior to January 1, 2005, the date on which common-law marriage was abolished; to deprive the spouse of the opportunity to establish his rights as the deceased's common-law spouse, simply because he and the deceased were a same-sex couple, would violate both the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In re Estate of Carter, 2017 PA Super 104, 159 A.3d 970 (2017).

4 Pavan v. Smith, 137 S. Ct. 2075, 198 L. Ed. 2d 636 (2017).

5 Pavan v. Smith, 137 S. Ct. 2075, 198 L. Ed. 2d 636 (2017).

6 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

7 Lewis v. Harris, 188 N.J. 415, 908 A.2d 196 (2006).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 887. Sexual orientation as basis for classification—Military

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3434

A.L.R. Library

Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R.5th 391

Forms

Forms relating to invalid discharge, generally; see Am. Jur. Pleading and Practice Forms, Military; Civil Defense [Westlaw® Search Query]

Law Reviews and Other Periodicals

Kostoulas, Ask, tell, and be merry: The constitutionality of "don't ask, don't tell" following Lawrence v. Texas and United States v. Marcum, 9 U. Pa. J. Const. L. 565 (2007)

Transgender plaintiffs adequately alleged violation of equal protection rights as result of Department of Defense Implementation Plan restricting transgender persons in the military; they alleged that the Plan subjected transgender service members to a different set of standards, categorically banned transgender persons who required or had undergone gender transition, and disqualified all transgender persons with a history or diagnosis of gender dysphoria from military service, that the Plan held transgender service members to different standards to receive medically necessary care, and that it discriminated on the basis of invidious stereotypes, irrational fears, and moral disapproval.[1] Transgender military service members stated a claim that a Presidential Memorandum, which directed the military to prohibit accession of transgender individuals to the military, to authorize their discharge, and to generally prohibit expenditure of military resources on sex-reassignment surgeries for military personnel, violated their equal protection rights, where the members alleged that the directives set them apart to be treated differently from all other military service members, and that the decision to exclude transgender individuals was not driven by genuine concerns regarding military efficacy.[2]

Provisions of the veterans' benefits law defining "surviving spouse" and "spouse" to only include persons of the opposite sex were unconstitutional as a violation of equal protection; excluding spouses in same-sex marriages from veterans' benefits was not rationally related to a legitimate state interest.[3]

Caution:

The "Don't Ask, Don't Tell" (DADT) statute[4] was repealed by the Don't Ask, Don't Tell Repeal Act of 2010, approved December 22, 2010, effective 60 days after the date on which the last of the following occurs: (1) the Secretary of Defense has received the report required by the memorandum of the Secretary of Defense; and (2) the President transmits to the congressional defense committees a written certification, signed by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, stating that (a) the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations contained in the report and the report's proposed plan of action; (b) the Department of Defense has prepared the necessary policies and regulations to exercise the discretion; and (c) the implementation of necessary policies and regulations pursuant to the discretion provided by law is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

Footnotes

1 Stone v. Trump, 400 F. Supp. 3d 317 (D. Md. 2019).

2 Stone v. Trump, 280 F. Supp. 3d 747 (D. Md. 2017), appeal dismissed, 2018 WL 2717050 (4th Cir. 2018).

3 Cooper-Harris v. U.S., 965 F. Supp. 2d 1139 (C.D. Cal. 2013), referring to 38 U.S.C.A. § 101(3), (31).

4 Former 10 U.S.C.A. § 654.

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16B Am. Jur. 2d Constitutional Law § 888

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 888. Age as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3071, 3085 to 3106

A.L.R. Library

Validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants, 5 A.L.R.4th 922

Because age is not a suspect classification, legislative distinctions based on age ordinarily are subject to a rational basis review for purposes of an equal protection challenge.[1] States may discriminate on the basis of age without offending the 14th Amendment's Equal Protection Clause if the age classification in question is rationally related to a legitimate state interest.[2] The Equal Protection Clause permits states to draw lines on the basis of age when they have a rational basis for doing so at a class-based level even if it is probably not true that those reasons are valid in the majority of cases. A state may rely on age as a proxy for other qualities, abilities, or characteristics that are relevant to the state's legitimate interests; that age proves to be an inaccurate proxy in any individual case is irrelevant. The rationality commanded by the Equal Protection Clause does not require states to match age distinctions and the legitimate interests they serve with razorlike precision.[3] Because an age classification is presumptively rational, the individual challenging its constitutionality under the Equal Protection Clause bears the burden

of proving that the facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.[4] When conducting a rational basis review in an equal protection challenge, the Supreme Court will not overturn government action unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the Court can only conclude that the government's actions were irrational.[5]

Minimum and maximum ages where clearly relevant and appropriate may be fixed as a qualification for such matters as public office or employment,[6] serving in the military,[7] Social Security benefits,[8] voting,[9] and so forth, and in general, such requirements are not objectionable on equal protection or other constitutional grounds. However, classification on the basis of age in the context of employment generally is considered an inherently invidious category and will be struck down if not reasonably related to a state interest and if totally arbitrary.[10]

Footnotes

1 Price v. Cohen, 715 F.2d 87 (3d Cir. 1983); Hatten v. Rains, 854 F.2d 687 (5th Cir. 1988); Zielasko v. State of Ohio, 873 F.2d 957 (6th Cir. 1989); L.D.R. by Wagner v. Berryhill, 920 F.3d 1146 (7th Cir. 2019), cert. denied, 140 S. Ct. 378, 205 L. Ed. 2d 230 (2019); McCann v. City of Chicago, 968 F.2d 635 (7th Cir. 1992); Ahlmeyer v. Nevada System of Higher Educ., 555 F.3d 1051, 241 Ed. Law Rep. 545 (9th Cir. 2009); Burnett v. San Francisco Police Department, 36 Cal. App. 4th 1177, 42 Cal. Rptr. 2d 879 (1st Dist. 1995); Industrial Claim Appeals Office of State of Colo. v. Romero, 912 P.2d 62 (Colo. 1996); State v. Anderson, 697 A.2d 379 (Del. 1997); Renko v. McLean, 346 Md. 464, 697 A.2d 468 (1997); State v. Hibler, 302 Neb. 325, 923 N.W.2d 398 (2019).

A state's mandatory retirement provision for judges challenged on equal protection grounds was held subject to rational basis scrutiny; age is not a suspect classification, and judges have no fundamental interest in serving as judges. Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).

Congress which was legitimately intent on stimulating the highest performance in the Foreign Service by assuring that opportunities for promotion would be available despite limits on the number of personnel in the Service and which plainly intended to create a relatively small, homogeneous, and particularly able corps of Foreign Service officers did not violate equal protection by requiring retirement at age 60 of federal employees covered by the Foreign Service retirement and disability system but not those covered by the Civil Service retirement and disability system. Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979).

As to age as a qualification to serve on a jury, see Am. Jur. 2d, Jury § 142.

2 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000); M.C. v. State, 134 N.E.3d 453 (Ind. Ct. App. 2019), transfer denied, 2020 WL 1487181 (Ind. 2020).

3 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

4 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

5 Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

6 Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976) (a state statute requiring the retirement of uniformed state police officers at age 50 does not deny equal protection of the laws to a police officer who is mandatorily retired under the statute at age 50, although the police officer is still capable of performing the police officer's duties); U.S. E. E. O. C. v. Calumet County, 686 F.2d 1249 (7th Cir. 1982); Pierce v. Fort Wayne Bd. of Public Safety, 155 Ind. App. 348, 301 N.E.2d 842 (1973); Figueroa v. Bronstein, 38 N.Y.2d 533, 381 N.Y.S.2d 470, 344 N.E.2d 402 (1976).

As to mandatory retirement provisions for judges, generally, see Am. Jur. 2d, Judges § 14.

As to age as affecting eligibility for a public office or employment, generally, see Am. Jur. 2d, Public Officers and Employees § 68.

7 Am. Jur. 2d, Military and Civil Defense § 45.

8 Califano v. Webster, 430 U.S. 313, 97 S. Ct. 1192, 51 L. Ed. 2d 360 (1977); Dillinger v. Schweiker, 762 F.2d 506 (6th Cir. 1985).

9 Am. Jur. 2d, Elections § 150.

10 Nelson v. Miwa, 56 Haw. 601, 546 P.2d 1005, 81 A.L.R.3d 799 (1976).

Age classifications in a workers' compensation statute governing retraining incentive benefits (RIB), which provided claimants between ages of 57 and 65 option of participating in approved retraining or education programs or receiving monetary benefits in lieu of RIB, an option not available to other age groups, did not violate equal protection provisions of Federal and State Constitutions. Ballou v. Enterprise Mining Co., LLC, 512 S.W.3d 724 (Ky. 2017).

As to age discrimination, generally, see Am. Jur. 2d, Civil Rights § 378.

As to job discrimination based on age, generally, see Am. Jur. 2d, Job Discrimination §§ 159 to 166.

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16B Am. Jur. 2d Constitutional Law § 889

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 889. Minors as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3088, 3091

A.L.R. Library

Validity, construction, and effect of juvenile curfew regulations, 83 A.L.R.4th 1056

Children are not a suspect class under the Equal Protection Clause,[1] and a statutory classification of minor children with permanent legal disabilities due to diminished capacity is not a suspect classification.[2]

It is undeniable that the equal protection guarantees provided by the Federal and State Constitutions are equally applicable to the young as well as the old.[3] Still, minors, always objects of special solicitude on the part of the law, constitute a class founded on a natural and intrinsic distinction from adults. Legislation peculiarly applicable to minors is necessary for their protection, and when induced by rational considerations looking to that end, its validity may not be challenged.[4] The strict scrutiny standard applied to an equal protection challenge to an ordinance imposing a six-hour curfew on persons under 17 years of age, as the constitutional right to freedom of movement was fundamental and the curfew represented a sweeping restriction.[5]

Thus, a nocturnal juvenile curfew ordinance which makes it a misdemeanor for persons under 17 to use city streets or to be present at other public places within the city between certain hours does not violate the Equal Protection Clause, inasmuch as the classification promotes the compelling governmental interest of reducing juvenile crime and victimization while promoting juvenile safety and well-being, and the ordinance employs the least restrictive means of accomplishing its goals by containing various defenses that allow affected minors to remain in public areas during curfew hours.[6] However, a city's juvenile curfew ordinance which impinged on minors' fundamental rights of free movement and travel was subject to a strict scrutiny analysis for purposes of evaluating the minors' equal protection challenge. The ordinance which made it unlawful for any minor to "loiter, idle, wander, stroll or play" in public areas during nocturnal curfew hours was not narrowly tailored to promote the city's compelling interest in reducing juvenile crime and juvenile victimization and therefore violated equal protection under a strict scrutiny analysis.[7] A city ordinance restricting admission to certain dance halls to persons between the ages of 14 and 18 does not violate the Equal Protection Clause because it is rationally related to the city's legitimate effort to protect teenagers within that age group from what could be the corrupting influences of older teenagers and young adults.[8]

Discrimination against minors by a state's three-year statute of limitations applicable to medical malpractice actions by application of a wrongful act point of accrual bears no rational relationship to the statute's objectives and violates the Equal Protection Clause.[9] However, a similar statute of repose in another state contained in a statute of limitations governing persons under a legal disability under which minor plaintiffs are treated differently from adult plaintiffs has been held rationally related to a legitimate legislative objective of helping health care providers procure available and affordable medical malpractice insurance so that providers will practice medicine in the state and does not violate the Equal Protection Clause,[10] and a shorter statute of repose, eight years, applied to plaintiffs under a legal disability, such as minority, incompetence, or incarceration, in contrast to a 10-year statute of repose applied to other plaintiffs does not violate equal protection.[11] A statute of limitations for an action for damages for injury to a minor as a result of sexual abuse allowing such victims to bring actions until 17 years after they reach the age of majority is for equal protection purposes rationally related to a legitimate state interest in deterring the sexual abuse of children and in providing a means for victims of childhood sexual abuse to recall traumatic events and understand the harm done to them before seeking redress.[12] In order to pass an equal protection challenge to statutes of limitations that apply to suits to establish paternity thereby limiting the ability of children to obtain support, the limitation must allow for a reasonable opportunity for a child or those with an interest in the child to assert claims on the child's behalf, and any time limitation placed on that opportunity must be substantially related to the state's interest in avoiding the litigation of stale or fraudulent claims.[13]

Footnotes

1 City of Dallas v. Stanglin, 490 U.S. 19, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989); Cunningham v. Beavers, 858 F.2d 269, 49 Ed. Law Rep. 490 (5th Cir. 1988).

2 Douglas by Douglas v. Hugh A. Stallings, M.D., Inc., 870 F.2d 1242 (7th Cir. 1989) (holding that although mentally handicapped minors have endured discrimination and prejudice by unenlightened members of society, they have not suffered a history of such discrimination at the hands of legislatures as have illegitimate children).

As to the mentally and physically disabled, see §§ 892, 893.

3 Pratt v. Tofany, 66 Misc. 2d 172, 320 N.Y.S.2d 555 (Sup 1971), judgment rev'd on other grounds, 37 A.D.2d 854, 326 N.Y.S.2d 257 (2d Dep't 1971).

As to the validity of statutes dealing with juveniles, generally, see Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children § 17.

As to age limits in relation to the custody and control of delinquent, dependent, and neglected children, see Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children § 11.

4 Moe v. Dinkins, 669 F.2d 67 (2d Cir. 1982) (not allowing minors to marry until they reach a certain age is permissible); Ferris v. Santa Clara County, 891 F.2d 715 (9th Cir. 1989) (sexual relations with minors); Burnett v. San Francisco Police Department, 36 Cal. App. 4th 1177, 42 Cal. Rptr. 2d 879 (1st Dist. 1995)

(cabaret owners and underage customers); Aldridge By and Through Aldridge v. Mims, 118 N.M. 661, 1994-NMCA-114, 884 P.2d 817 (Ct. App. 1994) (intestate succession statute); Texas Woman's University v. Chayklintaste, 530 S.W.2d 927 (Tex. 1975) (parietal rule at university); Doe v. Planned Parenthood Ass'n of Utah, 29 Utah 2d 356, 510 P.2d 75 (1973) (distributing birth control information to minors).

5 Com. v. Weston W., 455 Mass. 24, 913 N.E.2d 832 (2009).

6 Panama City Medical Diagnostic Ltd. v. Williams, 13 F.3d 1541 (11th Cir. 1994).

7 Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997).

8 City of Dallas v. Stanglin, 490 U.S. 19, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989).

9 Katz v. Children's Hosp. of Orange County, 28 F.3d 1520 (9th Cir. 1994), as amended, (July 26, 1994); Photias v. Doerfler, 45 Cal. App. 4th 1014, 53 Cal. Rptr. 2d 202 (2d Dist. 1996).

As to the constitutionality of limitation statutes, generally, see Am. Jur. 2d, Limitation of Actions §§ 28 to 35.

10 Bonin v. Vannaman, 261 Kan. 199, 929 P.2d 754 (1996).

11 Ripley v. Tolbert, 260 Kan. 491, 921 P.2d 1210 (1996).

12 Giordano v. Giordano, 39 Conn. App. 183, 664 A.2d 1136 (1995).

13 Pace v. State Through Louisiana State Employees Retirement System, 648 So. 2d 1302 (La. 1995).

A two-year statute of limitations for bringing a paternity action violates the Equal Protection Clause. Weegar v. Bakeberg, 527 N.W.2d 676 (S.D. 1995).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 890. Marital or family status as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3075, 3200 to 3206

A.L.R. Library

Validity, under Federal Constitution, of regulation or policy of college or university requiring students to live in dormitories or residence halls, 31 A.L.R. Fed. 813

Trial Strategy

Validity of Marriage, 177 Am. Jur. Proof of Facts 3d 111

Since the right to marry is considered a fundamental constitutional right, any statute affecting such right is subject to strict judicial scrutiny and must be supported by a compelling state interest.[1] A state antimiscegenation statute thus violates equal protection.[2]

Classifications based on marital status are ordinarily not suspect for equal protection purposes.[3] The same is true of distinctions between lawful marriages and common-law marriages.[4] However, a distinction between married and unmarried persons may constitute a denial of equal protection of the laws as to the latter group, as in the case of a state statute permitting distribution of contraceptives to married persons but prohibiting such distribution to unmarried persons.[5] A distinction between married and divorced women under a provision of the Social Security Act has been sustained as rational and consistent with the overriding aim of the Act to protect workers and their families.[6] School or university regulations distinguishing between married and single students have generally been held not to violate the Equal Protection Clause.[7]

Distinctions in the Tax Code between married taxpayers and unmarried economic partners did not violate equal protection since Congress had a rational basis for adopting marital classifications to account for the greater financial burdens of married taxpayers and to equalize treatment for those living in noncommunity property states; whether policy considerations warranted narrowing the gap between the tax treatment of married taxpayers and homosexual and other nonmarried economic partners was for Congress to determine.[8]

Failure to send assistance in response to a report of a husband being on his way to kill his wife states an equal protection claim where no rational basis exists for a county's alleged policy of affording victims of domestic violence less police protection than other crime victims.[9]

Under equal protection analysis, protection of the marital estate or community property rights does not impinge upon a "fundamental right" so as to warrant strict scrutiny of government classifications that threaten them.[10] Statutes allowing spouses who are omitted from wills to take a share of their deceased spouses' estates do not violate equal protection.[11] A homestead statute which excludes from its protection single persons without dependents except a widow or widower still living in the former marital domicile has been held not to violate the Equal Protection Clause.[12]

A village zoning ordinance restricting land use to one-family dwellings and excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses was not unconstitutional because it prohibited occupancy of a dwelling by more than two unrelated persons as a "family," while permitting occupancy by any number of persons related by blood, adoption, or marriage.[13]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayers that were United States citizens, who were married to noncitizens living in the United States illegally, and were denied economic impact payments under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) based on provision prohibiting payments to those whose spouse lacked a valid identification number, plausibly alleged that statute requiring such denial burdened their fundamental right of marriage and singled them out for disfavored treatment on the basis of marriage, as element of their Fifth Amendment due process claim against Secretary of the Treasury; taxpayers would have been required to file separate tax returns in order to have received payments, but this would have denied them benefits enjoyed by other married individuals on the basis of immigration status. U.S. Const. Amend. 5; 26 U.S.C.A. § 6428(g)(1)(B). Amador v. Mnuchin, 476 F. Supp. 3d 125 (D. Md. 2020).

[END OF SUPPLEMENT]

Footnotes

1 §§ 855, 856.

2 Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) (a state antimiscegenation statute violates the central meaning of the Equal Protection Clause which requires that freedom of choice to marry not be restricted by invidious racial discrimination, and the fact that the statute applies equally to members of both races who enter into mixed marriages does not make it nondiscriminatory).
As to governmental regulation of marriage, generally, see Am. Jur. 2d, Marriage §§ 11 to 14.
As to particular impediments to marriage, generally, see Am. Jur. 2d, Marriage §§ 49 to 63.

3 Renko v. McLean, 346 Md. 464, 697 A.2d 468 (1997); K.M.M. v. K.E.W., 539 S.W.3d 722 (Mo. Ct. App. E.D. 2017), transfer denied, (Mar. 6, 2018); Rutgers Council of AAUP Chapters v. Rutgers, The State University, 298 N.J. Super. 442, 689 A.2d 828, 116 Ed. Law Rep. 731 (App. Div. 1997).
As to the use of marital status in the selection process as job discrimination, see Am. Jur. 2d, Job Discrimination §§ 444 to 449.

4 Dannelley v. Almond as Next Friend of Almond, 827 S.W.2d 582 (Tex. App. Houston 14th Dist. 1992) (holding that a statutory one-year limitation period for proving a common-law marriage following termination of such a relationship did not violate the principle of equal protection insofar as common-law spouses are treated differently from ceremonially married spouses).
As to common-law marriage, generally, see Am. Jur. 2d, Marriage §§ 38 to 48.

5 Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972).

6 Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976).

7 Prostrollo v. University of South Dakota, 507 F.2d 775, 31 A.L.R. Fed. 802 (8th Cir. 1974); Pratz v. Louisiana Polytechnic Institute, 316 F. Supp. 872 (W.D. La. 1970), case dismissed, 401 U.S. 951, 91 S. Ct. 1186, 28 L. Ed. 2d 234 (1971) and judgment aff'd, 401 U.S. 1004, 91 S. Ct. 1252, 28 L. Ed. 2d 541 (1971).
As to the right of college and university authorities to promulgate reasonable rules and regulations for students, generally, see Am. Jur. 2d, Colleges and Universities § 27.

8 Mueller v. C.I.R., T.C. Memo. 2000-132, T.C.M. (RIA) P 2000-132 (2000), aff'd, 2001-1 U.S. Tax Cas. (CCH) P 50391, 87 A.F.T.R.2d 2001-2052, 2001 WL 522388 (7th Cir. 2001).

9 Navarro v. Block, 72 F.3d 712 (9th Cir. 1995), as amended on denial of reh'g, (Jan. 12, 1996).

10 White v. State Farm Mut. Auto. Ins. Co., 907 F. Supp. 1012 (E.D. Tex. 1995).

11 In re Estate of Long, 410 Pa. Super. 607, 600 A.2d 619 (1992); Mitchell v. Owens, 304 S.C. 23, 402 S.E.2d 888 (1991).

12 In re Statham, 483 F.2d 436 (9th Cir. 1973).
As to homesteads, generally, see Am. Jur. 2d, Homestead §§ 1 to 181.

13 Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974).

16B Am. Jur. 2d Constitutional Law § 891

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 891. Fitness as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3703

License laws which provide that all persons desiring to engage in a particular occupation shall be examined as to fitness or otherwise show that they possess the proper qualifications have usually been held valid.[1]

A classification which prohibits the hiring of police officers who are unable to run, jump, hop, stoop, turn, pivot, or perform similar movements without aid is rationally related to the asserted goal of protecting the public by having physically fit police officers and does not amount to a denial of equal protection.[2] Equal protection principles are not violated by a regulation that prohibits persons with an established medical history or clinical diagnosis of epilepsy from driving trucks in interstate commerce since the regulation is rationally related to furthering the legitimate state interest in public safety.[3]

Footnotes

1 Linehan v. Waterfront Com'n of New York Harbor, 347 U.S. 439, 74 S. Ct. 623, 98 L. Ed. 826 (1954) (waterfront employees); Lindquist v. City of Pasadena, Tex., 525 F.3d 383 (5th Cir. 2008) (used car dealerships).
As to classification of occupations, businesses, or pursuits, generally, see §§ 903 to 912.
As to power to require licensing, generally, see Am. Jur. 2d, Licenses and Permits §§ 7 to 15.

As to restrictions on licensing legislation, generally, see Am. Jur. 2d, Licenses and Permits §§ 16 to 24.
As to classification in licensing legislation, generally, see Am. Jur. 2d, Licenses and Permits §§ 29 to 34.
As to the regulation of occupations, generally, see Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 to 69.

2 Simon v. St. Louis County, Mo., 656 F.2d 316 (8th Cir. 1981).
Having a mentally and physically capable police force is an appropriate or highly important government purpose for drawing a classification that includes some members of the community, but excludes others as required by Common Benefits Clause of State Constitution and Federal Equal Protection Clause. Badgley v. Walton, 188 Vt. 367, 2010 VT 68, 10 A.3d 469 (2010).
As to regulation and prohibition of occupations and businesses under police power, see §§ 355 to 367.
As to health and physical fitness selection requirements as a form of job discrimination, see Am. Jur. 2d, Job Discrimination §§ 393 to 408.

3 Costner v. U.S., 720 F.2d 539 (8th Cir. 1983).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 892. Mental and physical disabilities as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3073(1), 3140 to 3176

The disabled are not a suspect class for equal protection purposes.[1] A governmental policy that purposefully treats the disabled differently from the nondisabled need only be rationally related to legitimate legislative goals to pass muster under the Equal Protection Clause.[2] Furthermore, states are not required by the 14th Amendment to make special accommodations for the disabled so long as their actions towards such individuals are rational; if special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause.[3]

Mentally disabled persons do not constitute a suspect or quasi-suspect classification calling for a more exacting standard of judicial review than is normally accorded economic and social legislation. This is so because the states' interest in dealing with and providing for the mentally disabled is a legitimate, distinctive, legislative response, both national and state, to the plight of such persons which interest demonstrates not only that they have unique problems but also that lawmakers have been addressing their difficulties in a manner that belies any continuing antipathy or prejudice and the corresponding need for more intrusive oversight by the judiciary. Additionally, the mentally disabled are not politically powerless, and if they were deemed quasi-suspect, it would be difficult to find a principled way to distinguish other groups who have immutable disabilities setting them off from others, who cannot themselves mandate desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large.[4] Nonetheless, employers may not deny equal protection to mentally disabled employees.[5]

A rational basis exists for a statutory imposition of a higher burden of proof upon proceedings for involuntary commitment of mentally ill persons than for mentally disabled persons. The imposition of a standard of proof of beyond a reasonable doubt upon the commitment of the former and only clear and convincing evidence upon commitment of the latter is justified by the relative ease of diagnosis of mental disabilities such that assigning a higher burden of proof to a mental illness equalizes the risk of erroneous determination. The higher standard for mentally ill persons is also justified on the ground that, in general, their treatment is much more intrusive than that received by mentally disabled persons.[6]

Observation:

A statute prohibiting the unlawful possession of a firearm after commitment to a mental institution is not unconstitutional on equal protection grounds as applied to a defendant who fails to make a threshold showing that such defendant is similarly situated to defendants who have neither been adjudicated to be mentally ill nor ordered to be committed to a mental institution.[7]

The prohibition against discrimination against physically disabled individuals stems from the constitutional requirement for equal protection.[8] However, the physically disabled are not a protected suspect class for purposes of equal protection under the 14th Amendment; thus, a rational basis scrutiny is appropriate for analyzing equal protection claims by members of that group.[9]

Footnotes

1 Toledo v. Sanchez, 454 F.3d 24, 211 Ed. Law Rep. 25 (1st Cir. 2006); Trotman v. State, 466 Md. 237, 218 A.3d 265 (2019).

2 Martin v. California Dept. of Veterans Affairs, 560 F.3d 1042 (9th Cir. 2009); Robinson v. County of Shasta, 384 F. Supp. 3d 1137 (E.D. Cal. 2019).

3 Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001).

4 City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981); Cospito v. Heckler, 742 F.2d 72 (3d Cir. 1984).

As to the rights of mentally impaired persons, generally, see Am. Jur. 2d, Mentally Impaired Persons §§ 74 to 119.

As to the Americans with Disabilities Act, generally, see Am. Jur. 2d, Americans with Disabilities Act Analysis and Implications §§ 1 to 849.

5 Fowler v. U.S., 633 F.2d 1258 (8th Cir. 1980).

6 Heller v. Doe by Doe, 509 U.S. 312, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993).

As to civil commitment proceedings, generally, see Am. Jur. 2d, Mentally Impaired Persons §§ 3 to 73.

7 U.S. v. Whiton, 48 F.3d 356 (8th Cir. 1995).

8 Fell v. Spokane Transit Authority, 128 Wash. 2d 618, 911 P.2d 1319 (1996).

9 Doe v. University of Maryland Medical System Corp., 50 F.3d 1261, 9 A.D.D. 1048, 99 Ed. Law Rep. 74 (4th Cir. 1995); D'Amato v. Wisconsin Gas Co., 760 F.2d 1474 (7th Cir. 1985); Gamble v. City of Escondido, 104 F.3d 300, 19 A.D.D. 740 (9th Cir. 1997); Welsh v. City of Tulsa, Okl., 977 F.2d 1415 (10th Cir. 1992).

As to the Americans with Disabilities Act, generally, see Am. Jur. 2d, Americans with Disabilities Act Analysis and Implications §§ 1 to 849.50.

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 893. Mental and physical disabilities as basis for classification—Alcoholism and drug abuse

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3073(1), 3140 to 3176

The status of being an alcoholic or a recovering alcoholic is not a suspect class for equal protection purposes, and thus, the lowest level of scrutiny applies to actions allegedly taken in response to a person's status as an alcoholic.[1] Drug users are not a suspect class.[2]

Footnotes

1 Gazette v. City of Pontiac, 41 F.3d 1061, 1994 FED App. 0405P (6th Cir. 1994).

2 New York City Transit Authority v. Beazer, 440 U.S. 568, 99 S. Ct. 1355, 59 L. Ed. 2d 587 (1979) (holding that the New York City Transit Authority's blanket exclusion from employment of persons who regularly use narcotic drugs, including methadone, did not violate the Equal Protection Clause for failing to include more precise special rules for methadone users who have progressed satisfactorily with their treatment and who when examined individually satisfy the Authority's employment criteria for nonsensitive jobs).
As to the requirements of freedom from substance abuse and consent to drug testing as a form of job discrimination, see Am. Jur. 2d, Job Discrimination §§ 409 to 435.

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 894. Residence and state citizenship as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3080, 3350 to 3378

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Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period, 65 A.L.R.3d 1048

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641

Residence of students for voting purposes, 44 A.L.R.3d 797

Validity, under Federal Constitution, of state bar examination procedures, 30 A.L.R. Fed. 934

In considering the application of the Equal Protection Clause of the 14th Amendment to legislation discriminating between the residents and nonresidents of a state, the Equal Protection Clause cannot be invoked unless the action of a state denies the equal protection of the laws to persons "within its jurisdiction."[1] If persons are, however, in the purview of this Clause within the

jurisdiction of a state, the Clause guarantees to all so situated, whether citizens or residents of the state or not, the protection of the state's laws equally with its own citizens.[2] A state is not at liberty to establish varying codes of law, one for its own citizens and another governing the same conduct for citizens of sister states, except in a case when the apparent discrimination is not to cast a heavier burden upon the nonresident in its ultimate operation than the one falling upon residents but is to restore the equilibrium by withdrawing an unfair advantage.[3] On the other hand, a nonresident may not complain of a restriction no different from that placed upon residents.[4]

Utilization of different but otherwise constitutionally adequate procedures for residents and nonresidents does not by itself trigger heightened scrutiny under the Equal Protection Clause.[5] The rational basis test applies to determine whether distinctions between residents and nonresidents violates the Equal Protection Clause.[6] Thus, reasonable residency requirements are permissible under the Equal Protection Clause in cases involving voting in elections,[7] holding public office or employment,[8] and for the purpose of receiving various types of government benefits[9] or for tuition purposes.[10] Such residency requirements are quite common and, generally, though not always, are valid and proper. However, a statute providing for countywide territorial jurisdiction of a municipal court may violate the equal protection rights of county residents who are subject to the municipal court's territorial jurisdiction but are not enfranchised to elect municipal judges.[11] Residence may also be a proper condition precedent to commencement of various suits.[12] Tax laws may make reasonable distinctions between residents and nonresidents.[13] On the other hand, license legislation that discriminates against nonresidents of the state or nonresidents of a political subdivision of the state, either by refusing to grant licenses to such nonresidents or by granting them on different terms, such as by charging nonresidents a higher fee or adding other burdens, is void as denying equal protection of the laws.[14]

A state regulatory statute exempting nonresidents does not deny the equal protection of the laws guaranteed by the 14th Amendment where it rests upon a state of facts that can reasonably be conceived to constitute a distinction or difference in state policy.[15] Conversely, a state's exemption statute that limits exemption for personal injury awards to only South Carolina residents did not deprive a nonresident of equal protection of the laws where the classification of residents versus nonresidents was reasonably related to the legislative purpose of protecting residents from financial indigency and where the classification was based upon the state's interest in preventing its citizens from becoming dependent on the state for support.[16]

The limitation on the right of one state to establish preferences in favor of its own citizens does not depend solely on the guarantee of equal protection of the laws[17] which does not protect persons not within the jurisdiction of such a state.

Footnotes

1 § 843.

2 Wheeling Steel Corp. v. Glander, 337 U.S. 562, 69 S. Ct. 1291, 93 L. Ed. 1544, 55 Ohio L. Abs. 305 (1949).

3 Smith v. Loughman, 245 N.Y. 486, 157 N.E. 753 (1927).

4 People ex rel. Salisbury Axle Co. v. Lynch, 259 N.Y. 228, 181 N.E. 460 (1932).

5 Whiting v. Town of Westerly, 942 F.2d 18 (1st Cir. 1991).

6 The Nationalist Movement v. City of York, 481 F.3d 178 (3d Cir. 2007) (holding that a city's $50 fee differential which was $50 as to residents and $100 as to nonresidents charged for purposes of obtaining a permit to conduct a public assembly, parade, picnic, or other event on public land involving more than 25 individuals furthered the legitimate government purpose of encouraging residents to hold events locally and thus was not violative of the Equal Protection Clause); Pena Martinez v. Azar, 376 F. Supp. 3d 191 (D.P.R. 2019); Moro v. State, 357 Or. 167, 351 P.3d 1 (2015).
A Kansas statute and rules of court permitting an out-of-state lawyer to practice before Kansas tribunals only if such lawyer associates a member of the Kansas bar with such lawyer as an attorney of record does not

violate the 14th Amendment either on its face or as applied to a lawyer maintaining law offices and a practice of law both out of state and in Kansas. Martin v. Walton, 368 U.S. 25, 82 S. Ct. 1, 7 L. Ed. 2d 5 (1961).

As to the right of nonresident attorneys to practice law in other states as related to freedom of association, see § 596.

As to residency requirements to serve on a jury, see Am. Jur. 2d, Jury § 144.

7 Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S. Ct. 383, 58 L. Ed. 2d 292, 26 Fed. R. Serv. 2d 635 (1978); Rosario v. Rockefeller, 410 U.S. 752, 93 S. Ct. 1245, 36 L. Ed. 2d 1 (1973) (holding that a 30-day residential requirement is permissible); Marston v. Lewis, 410 U.S. 679, 93 S. Ct. 1211, 35 L. Ed. 2d 627 (1973) (holding that a 50-day durational voter residency requirement and a 50-day voter registration requirement for state and local elections are not unconstitutional under the Equal Protection Clause); Ballas v. Symm, 494 F.2d 1167 (5th Cir. 1974).

Under the Equal Protection Clause, persons living on the grounds of the National Institutes of Health, a federal enclave situated in Maryland, are entitled to protect their stake in elections by exercising their right to vote, and their living on such grounds cannot constitutionally be treated as a basis for concluding that they do not meet Maryland residency requirements for voting. Evans v. Cornman, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

As to residency requirements for voters, generally, see Am. Jur. 2d, Elections §§ 159 to 167.

8 Am. Jur. 2d, Public Officers and Employees § 70.

9 Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974) (holding a state statute requiring a year's residence in a county as a condition to an indigent's receiving nonemergency hospitalization or medical care at the county's expense was repugnant to the Equal Protection Clause); Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970) (holding that a two-year residency requirement for eligibility for low-income housing violated the Equal Protection Clause).

10 Vlandis v. Kline, 412 U.S. 441, 93 S. Ct. 2230, 37 L. Ed. 2d 63 (1973).

11 State v. Webb, 323 Ark. 80, 913 S.W.2d 259 (1996), opinion supplemented on other grounds on denial of reh'g, 323 Ark. 80, 920 S.W.2d 1 (1996).

12 § 921.

13 Am. Jur. 2d, State and Local Taxation § 108.

14 Am. Jur. 2d, Licenses and Permits § 31.

15 Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, 82 Ohio L. Abs. 312 (1959).

16 American Service Corp. of South Carolina v. Hickle, 312 S.C. 520, 435 S.E.2d 870 (1993).

17 Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel, 20 F.3d 1311 (4th Cir. 1994); Kasom v. City of Sterling Heights, 600 F. Supp. 1555 (E.D. Mich. 1985), judgment aff'd, 785 F.2d 308 (6th Cir. 1986).

As to the privileges and immunities of citizenship, generally, see §§ 783 to 816.

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16B Am. Jur. 2d Constitutional Law § 895

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 895. Veterans and other military personnel as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3665 to 3669

Differential treatment of resident veterans as distinguished from nonveterans does not offend the Equal Protection Clause,[1] nor is it unlawful to treat reserve military personnel differently from active military personnel.[2] Under the Equal Protection Clause, a classification involving veterans does not result in invidious or irrational distinctions among a state's residents, does not affect a suspect or semisuspect class, and does not regulate fundamental rights.[3]

Observation:

Military personnel do not constitute a suspect class for purposes of equal protection analysis. Thus, analyzing military regulations under a rational basis equal protection review, a court will determine whether the regulations are directed at the achievement of a legitimate governmental purpose and, if so, whether they rationally further that purpose. When judging the rationality of a military regulation, a court owes even more special deference to the considered professional judgment of appropriate military officials than is owed in an ordinary case.[4] In asking whether the Secretary of Defense, Secretary of the Air Force, and Department of Defense's actions were rational, for purposes of an equal protection claim, the court must defer to the professional judgment of military authorities concerning the relative importance of a particular military interest.[5]

Congress's eligibility requirements for nonservice-connected pension benefits are not unconstitutional on equal protection grounds merely because they treat veterans who served in Vietnam differently than those who served elsewhere during the same time period.[6]

Making Philippine veterans of World War II, who were called into the service of the United States Army, ineligible for veterans' pension benefits did not violate the principles of equal protection even if the pension claimant had become a resident of the United States; the fact that the estimated cost of extending full benefits to Philippine veterans would be $2 million annually was itself a sufficient basis upon which Congress could rationally exclude them from pension benefits.[7]

Discriminatory treatment of military personnel in legislative reapportionment is constitutionally impermissible.[8] A restriction of a civil service veterans' preference only to those veterans who entered the armed forces while residing in a particular state violates the Equal Protection Clause.[9]

Footnotes

1 Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985).

2 Charles v. Rice, 28 F.3d 1312 (1st Cir. 1994).
As to military service, generally, see Am. Jur. 2d, Military and Civil Defense §§ 38 to 201.

3 Bentz v. Township of Little Egg Harbor, 30 N.J. Tax 530, 2018 WL 3583755 (2018), aff'd, 31 N.J. Tax 209, 2019 WL 3026876 (Super. Ct. App. Div. 2019).

4 Steffan v. Perry, 41 F.3d 677, 96 Ed. Law Rep. 32 (D.C. Cir. 1994).
As to homosexuals in the military, see § 887.

5 Roe v. Shanahan, 359 F. Supp. 3d 382 (E.D. Va. 2019), aff'd, 947 F.3d 207 (4th Cir. 2020), as amended, (Jan. 14, 2020).

6 Lamm v. McDonald, 640 Fed. Appx. 979 (Fed. Cir. 2016).

7 Talon v. Brown, 999 F.2d 514 (Fed. Cir. 1993).
As to status and benefits as a veteran, see Am. Jur. 2d, Veterans and Veterans' Laws §§ 1 to 198.

8 Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973).

9 Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986); Del Monte v. Wilson, 1 Cal. 4th 1009, 4 Cal. Rptr. 2d 826, 824 P.2d 632 (1992).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

b. Other Personal Attributes or Characteristics as Basis for Classification

§ 896. Wealth or poverty as basis for classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3076, 3210 to 3228

A.L.R. Library

Validity, Construction, and Application of State Statutes Limiting or Conditioning Receipt of Government Funds by Abortion Providers, 26 A.L.R.7th Art. 9

Validity Of State Statutes And Regulations Limiting or Restricting Public Funding for Abortions Sought By Indigent Women, 118 A.L.R.5th 463

Neither poverty nor wealth is a basis for declaring a suspect classification that would give rise to a strict scrutiny analysis under the Equal Protection Clause,[1] and the Equal Protection Clause does not require the states to equalize economic conditions.[2] However, a classification based on poverty or wealth can become a suspect classification, subject to more rigid scrutiny than other classifications, when such classification interferes with a fundamental constitutional right.[3]

Compelling an incarcerated accused to stand trial in jail garb, over objection, is repugnant to the concept of equal justice embodied in the 14th Amendment since persons who can secure release are not subjected to such a condition which usually

operates against only those who cannot post bail prior to trial.[4] Similarly, a person may not be denied, on the basis of poverty, the right to vote[5] or the right to become a candidate for public office.[6] A statute authorizing a school district to charge a fee for transportation is not subject to strict scrutiny when challenged on equal protection grounds based on unavailing arguments that the fee unconstitutionally places a greater obstacle to education in the path of the poor than it does in the path of wealthier families and that the Equal Protection Clause affirmatively requires the government to provide free transportation to school.[7]

Although a state may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program, it may not accomplish such a purpose by invidious distinctions, in violation of the Equal Protection Clause, between classes of its citizens.[8] The saving of welfare costs will not justify an otherwise invidious classification.[9]

On the other hand, where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages,[10] and unless a distinct class of disadvantaged "poor" can be identified, a classification cannot be challenged on the ground of wealth under the Equal Protection Clause.[11] Moreover, classifications based on income[12] or economic status are not unconstitutional if a rational basis exists in their support.[13] State legislation for the creation of low-rent housing does not violate equal protection requirements.[14] It is not violative of the Equal Protection Clause for a state participating in Medicaid to generally subsidize the medical expenses of needy persons incident to pregnancy and childbirth, but to exclude nontherapeutic abortions for needy persons from funding by limiting the payment of Medicaid benefits for abortions to those that occur during the first trimester of pregnancy and are medically necessary.[15]

The Equal Protection Clause of the Federal Constitution does not prevent a state from imposing different rates of taxation on different classes of persons or property.[16]

Footnotes

1 Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980); Sheff v. O'Neill, 238 Conn. 1, 678 A.2d 1267, 111 Ed. Law Rep. 360 (1996); Jenkins v. Leininger, 277 Ill. App. 3d 313, 213 Ill. Dec. 719, 659 N.E.2d 1366, 106 Ed. Law Rep. 804 (1st Dist. 1995); City of Pawtucket v. Sundlun, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).
Generally, equal protection claims based on indigency are subject to only rational basis review. Jones v. DeSantis, 410 F. Supp. 3d 1284 (N.D. Fla. 2019), aff'd, 950 F.3d 795 (11th Cir. 2020).
As to the validity of vagrancy laws, see Am. Jur. 2d, Vagrancy and Related Offenses § 2.

2 Davis v. State, 912 S.W.2d 689 (Tenn. 1995); Madison v. State, 161 Wash. 2d 85, 163 P.3d 757 (2007).

3 State ex rel. Semetko v. Board of Com'rs, 30 Ohio App. 2d 130, 59 Ohio Op. 2d 239, 283 N.E.2d 648 (6th Dist. Lucas County 1971).
Heightened scrutiny is warranted under the Equal Protection Clause where a state has chosen to alleviate punishment for some, but mandates that punishment continue for others, solely on account of wealth. Jones v. Governor of Florida, 950 F.3d 795 (11th Cir. 2020) (holding that Florida felons who were denied reenfranchisement for failing to pay fines were likely to succeed on merits of their equal protection claim).
As to the right of indigent defendants to counsel, see Am. Jur. 2d, Criminal Law §§ 1085 to 1092.

4 Estelle v. Williams, 425 U.S. 501, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976).

5 Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).
The Equal Protection Clause forbids a state to reduce, in proportion to the amount of property an individual owns, such individual's voting power in a revenue bond referendum. Gordon v. Lance, 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971).
As to the payment of taxes as a qualification for voting, see Am. Jur. 2d, Elections § 156.

6 Lubin v. Panish, 415 U.S. 709, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974).

A state statutory filing-fee scheme requiring candidates in party primary elections to shoulder the costs of conducting primary elections through large filing fees, without providing a reasonable alternative means of access to the ballot, denies equal protection of the laws because it utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972).

As to eligibility and qualifications for public office or employment, generally, see Am. Jur. 2d, Public Officers and Employees §§ 48 to 82.

7 Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 108 S. Ct. 2481, 101 L. Ed. 2d 399, 47 Ed. Law Rep. 383 (1988).

8 Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

9 Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

10 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973) (holding that it was not within the constitutional prerogative of the Supreme Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live).

11 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Nieves v. University of Puerto Rico, 7 F.3d 270, 86 Ed. Law Rep. 611 (1st Cir. 1993) (holding, however, that poverty is a suspect classification under Puerto Rican laws).

12 Douglas v. Babcock, 990 F.2d 875 (6th Cir. 1993).

13 Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976); Ortwein v. Schwab, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973); Jefferson v. Hackney, 406 U.S. 535, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

14 Am. Jur. 2d, Housing Laws and Urban Redevelopment § 3.

15 Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977).

As to the constitutionality of governmental restrictions on public funding or use of public facilities or employees, generally, see Am. Jur. 2d, Abortion and Birth Control §§ 46 to 53.

16 Am. Jur. 2d, State and Local Taxation § 111.

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16B Am. Jur. 2d Constitutional Law § 897

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 897. Size, amount, or quantity as bases for individual classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3036

In some cases, size, amount, or quantity may be an appropriate index for classification, creating such differences that it may be properly used as a basis for a legislative discrimination between the large and the small,[1] since it is within the competence of the legislature to determine that control of the smaller manifestations of a particular evil would not appreciably eradicate the evil whereas regulation of large manifestations would.[2] This principle has been applied in various matters and with varying results, with legislation keyed to the size, amount, or quantity of:

- real property[3]
- potential damage awards[4]
- insurance[5]
- earnings[6]
- loans[7]
- taxes[8]

• criminal offenses[9]

However, the law cannot discriminate between the great and the small where size is not an index to an admitted problem or evil.[10]

Footnotes

1 Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982); Alabama State Federation of Teachers, AFL-CIO v. James, 656 F.2d 193 (5th Cir. 1981).

2 Rublick v. Weaver, 9 Misc. 2d 619, 170 N.Y.S.2d 61 (Sup 1957), judgment aff'd, 4 N.Y.2d 974, 177 N.Y.S.2d 498, 152 N.E.2d 523 (1958).

3 Ybarra v. Town of Los Altos Hills, 503 F.2d 250 (9th Cir. 1974) (holding that a zoning ordinance allowing for only one primary dwelling unit per acre of land was rationally related to preserving a town's rural environment and did not violate the Equal Protection Clause).

4 Richardson v. Sport Shinko (Waikiki Corp.), 76 Haw. 494, 880 P.2d 169 (1994) (holding that a statute requiring a tort action having a probable jury value award of less than $150,000 to be submitted to a court-annexed arbitration program did not significantly interfere with the party's constitutional right to a jury trial and was subject to a rational basis, rather than a strict scrutiny, equal protection analysis).

5 Thompson v. KFB Ins. Co., 252 Kan. 1010, 850 P.2d 773 (1993) (holding that a statute which allowed evidence of collateral source benefits where a claimant demanded judgment for damages in excess of $150,000 violated equal protection; even assuming that the statute's objective was to cut insurance costs and that this was a legitimate objective, the classification did not reasonably further that purpose).

6 Hunter v. City of New York, 58 A.D.2d 136, 396 N.Y.S.2d 186 (1st Dep't 1977), order aff'd, 44 N.Y.2d 708, 405 N.Y.S.2d 455, 376 N.E.2d 928 (1978) (holding that a local law requirement of financial disclosure by city employees earning a salary of $25,000 or more, whether or not they exercised discretion or performed management functions, did not involve a constitutionally impermissible classification).

7 Ex parte Fuller, 15 Cal. 2d 425, 102 P.2d 321 (1940); Mutual Loan Co. v. Martell, 200 Mass. 482, 86 N.E. 916 (1909), aff'd, 222 U.S. 225, 32 S. Ct. 74, 56 L. Ed. 175 (1911).

8 Dicks v. Naff, 255 Ark. 357, 500 S.W.2d 350 (1973); City of Los Angeles v. Shell Oil Co., 4 Cal. 3d 108, 93 Cal. Rptr. 1, 480 P.2d 953 (1971).

9 Allen v. Smith, 84 Ohio St. 283, 95 N.E. 829 (1911).
As to grades, degrees, and statutory classes of larceny, based on the value of the property taken, see Am. Jur. 2d, Larceny § 45.

10 Engel v. O'Malley, 219 U.S. 128, 31 S. Ct. 190, 55 L. Ed. 128 (1911).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 898. Size, amount, or quantity as bases for individual classification—Numbers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3036

Classification based on numbers is not necessarily unreasonable. There are instances in which it has been sustained.[1]

Footnotes

1 Herbring v. Lee, 280 U.S. 111, 50 S. Ct. 49, 74 L. Ed. 217, 64 A.L.R. 1430 (1929); People of State of New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S. Ct. 61, 73 L. Ed. 184, 62 A.L.R. 785 (1928).
Chain stores may be classified separately from individual establishments, and chains may be subjected to taxes or fees graduated according to the number of units contained therein. Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 899. Size, amount, or quantity as bases for individual classification—Exemption of minimal amounts of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3036

Statutes exempting certain minimal amounts property from execution and attachment, such as the homestead of the debtor, the books and library of the professional man or woman, the surgical implements of the physician, or the household furniture and other articles belonging to ordinary debtors, have been upheld.[1] Such acts when based on proper classification are generally sustained.[2]

Footnotes

1 Denny v. Bennett, 128 U.S. 489, 9 S. Ct. 134, 32 L. Ed. 491 (1888); Williams v. Donough, 65 Ohio St. 499, 63 N.E. 84 (1902).
As to the validity of classifications in exemption laws, generally, see Am. Jur. 2d, Exemptions §§ 10, 11.

2 K & L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Alaska 1971); Ballard v. Supervisor of Assessments of Baltimore County, 269 Md. 397, 306 A.2d 506 (1973); In re Woods Corp., 1975 OK 19, 531 P.2d 1381 (Okla. 1975).
The immunity of reservation Indians from state taxation extended by a federal court applying federal law does not force a racially based exemption onto the state so as to create a state statutory classification violative

of the state's duty under the Equal Protection Clause. Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976).

A state constitutional provision exempting individuals from ad valorem personal property taxes, and thus, operating to impose such taxes only on corporations and other "non-individuals" does not violate the Equal Protection Clause. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973).

However, denial of tax-exempt status to a nonprofit foreign corporation which qualified for exemption in every respect except that it was not incorporated in New Jersey denied it equal protection of the laws. WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968).

As to tax exemptions and rules of equality, generally, see Am. Jur. 2d, State and Local Taxation §§ 212, 216.

As to uniformity and equality in the operation of inheritance and estate taxes, generally, see Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 13 to 25.

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16B Am. Jur. 2d Constitutional Law § 900

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 900. Locality or territory as bases for individual classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3037

The Equal Protection Clause relates to equality between persons as such rather than between areas or localities.[1] Territorial uniformity is not a constitutional prerequisite.[2] Consequently, it is well settled that the Constitution of the United States in securing the equal protection of the laws does not prohibit legislation which is limited as to the territory within which it is to operate.[3] In the absence of restrictions contained in state constitutions, the legislature may determine within broad limits whether particular laws shall extend to the whole state or be limited in their operation to particular portions of the state. All that the Federal Constitution requires is that they must be general in their application within the territory in which they operate.[4] A statute which applies to one city, only, does not deny the equal protection of the laws where it is based on some real distinction between the particular city and the other territory of the state.[5] Classification based on a limited geographical area designated by a certain number of miles beyond a political boundary is not per se arbitrary or discriminatory.[6] Even the fact that a statute applies only to one locality does not necessarily render it unconstitutional,[7] although this fact is to be considered in determining its validity.[8] It is necessary, however, that there be a reasonable basis for the limitation or differentiation and that all persons similarly situated in the same territory be treated alike.[9]

When fundamental rights or suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the Equal Protection Clause.[10]

A crucial question in resolving the issue of whether the Equal Protection Clause permits a state to distribute the benefits of assets arising out of federal school land grants unequally among the school districts is whether federal law requires the state to allocate the economic benefits of school lands to schools in the surveyed townships in which those lands are located; if, as a matter of federal law, the state has no choice, then the state may properly be enjoined from implementing federal policy if the federal policy itself violates equal protection. However, if the federal law is valid and the state is bound by it, then the federal law provides a rational reason for the funding disparities.[11]

The obligation of the state to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction, and it is there that the equality of legal right must be maintained; that obligation is imposed by the Constitution upon the States severally as governmental entities, each responsible for its own laws establishing the rights and duties of persons within its borders, and it is an obligation the burden of which cannot be cast by one state upon another, and no state can be excused from performance by what another state may do or fail to do.[12]

Footnotes

1 Griffin v. County School Bd. of Prince Edward County, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964); McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Cain v. City of New Orleans, 327 F.R.D. 111 (E.D. La. 2018).

2 McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).

A statute under which Puerto Rico receives less assistance under the Aid to Families with Dependent Children (AFDC) program than do the states does not violate the equal protection guarantee of the Fifth Amendment, there being a rational basis for the statutory classification since (1) Puerto Rican residents do not contribute to the federal treasury, (2) the cost of treating Puerto Rico as a state for purposes of AFDC assistance would be high, and (3) granting greater AFDC benefits could disrupt the Puerto Rican economy. Harris v. Rosario, 446 U.S. 651, 100 S. Ct. 1929, 64 L. Ed. 2d 587 (1980).

3 Ft. Smith Light & Traction Co. v. Board of Imp. of Paving Dist. No. 16 of City of Ft. Smith, Ark., 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927); Yoo Kun Wha v. Kelly, 154 So. 2d 161 (Fla. 1963); Salsburg v. State, 201 Md. 212, 94 A.2d 280 (1953), judgment aff'd, 346 U.S. 545, 74 S. Ct. 280, 98 L. Ed. 281 (1954).

In challenging the validity of a statute under constitutional equal protection principles, a claim of arbitrariness cannot rest solely on the statute's lack of uniform geographic impact. Hodel v. Indiana, 452 U.S. 314, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981).

The 14th Amendment does not prohibit legislation merely because it is special or limited in its application to a particular geographical or political subdivision of the state; rather, the Equal Protection Clause is offended only if the statute's classification rests on grounds wholly irrelevant to the achievement of the state's objective. Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S. Ct. 383, 58 L. Ed. 2d 292, 26 Fed. R. Serv. 2d 635 (1978).

A state Sunday closing law does not violate the Equal Protection Clause merely because it exempts from its scope retailers in only one county. McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).

4 Knudson v. Linstrum, 233 Iowa 709, 8 N.W.2d 495 (1943); Moseley v. Welch, 218 S.C. 242, 62 S.E.2d 313 (1950).

5 Quinn v. Board of Education of City of Chicago, 2018 IL App (1st) 170834, 423 Ill. Dec. 301, 105 N.E.3d 106, 357 Ed. Law Rep. 783 (App. Ct. 1st Dist. 2018).

6 Thompson v. Dickson, 202 Or. 394, 275 P.2d 749 (1954).

7 Collector of Revenue of City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens Serial Numbers 1-047 and 1-048, 517 S.W.2d 49 (Mo. 1974).

8 May v. City of Laramie, 58 Wyo. 240, 131 P.2d 300 (1942).

9 McGlothlen v. Department of Motor Vehicles, 71 Cal. App. 3d 1005, 140 Cal. Rptr. 168 (1st Dist. 1977); Smith v. Transcontinental Gas Pipeline Corp., 310 So. 2d 281 (Miss. 1975); Allison v. City of Akron, 45 Ohio App. 2d 227, 74 Ohio Op. 2d 343, 343 N.E.2d 128 (9th Dist. Summit County 1974).

10 Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187 (1971).

11 Papasan v. Allain, 478 U.S. 265, 106 S. Ct. 2932, 92 L. Ed. 2d 209, 32 Ed. Law Rep. 1197 (1986).

12 Planned Parenthood of Wisconsin, Inc. v. Schimel, 806 F.3d 908 (7th Cir. 2015).

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16B Am. Jur. 2d Constitutional Law § 901

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 901. Locality or territory as bases for individual classification—Where locality is determined by population

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3037

A.L.R. Library

Validity of statutory classifications based on population-intoxicating liquor statutes, 100 A.L.R.3d 850

Validity of statutory classifications based on population—tax statutes, 98 A.L.R.3d 1083

Validity of statutory classifications based on population-zoning, building, and land use statutes, 98 A.L.R.3d 679

Validity of statutory classifications based on population—jury selection statutes, 97 A.L.R.3d 434

Validity of statutory classifications based on population-governmental employee salary or pension statutes, 96 A.L.R.3d 538

Under the usual circumstances and for most purposes, the legislature may, in the exercise of the various powers of state sovereignty which it possesses, employ population as a basis for classification, making distinctions applicable to people of different localities on such grounds without violating any of the federal or state constitutional guarantees of equality.[1] Indeed, distinction by classification according to population is grounded in good sense, since the complexity of community regulation increases directly in proportion to increases in population, and statutes necessary for a large community would be

too burdensome for a smaller community.[2] Similarly, a law does not violate the requirement as to the equal protection of the laws merely because its operation is confined to cities having a designated population.[3]

Classification on the basis of population must have a reasonable relation to the purposes and objects of the legislation and must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws.[4] If no such relation and differences exist, the classification is invalid.[5] Moreover, a classification of a specific type of political subdivision, such as counties, based on population, which includes all such subdivisions which subsequently come within its provisions, is a reasonable classification and is a sufficiently rational basis to withstand a constitutional attack even if only a single subdivision is embraced within the class affected by it.[6]

Footnotes

1 Radice v. People of State of New York, 264 U.S. 292, 44 S. Ct. 325, 68 L. Ed. 690 (1924); Tarter v. James, 667 F.2d 964 (11th Cir. 1982); Board of Trustees of Municipal Judges and Clerks Fund v. Beard, 273 Ark. 423, 620 S.W.2d 295 (1981); State ex rel. Atkinson v. Planned Indus. Expansion Authority of St. Louis, 517 S.W.2d 36, 98 A.L.R.3d 663 (Mo. 1975); Thompson v. Dickson, 202 Or. 394, 275 P.2d 749 (1954); In re La Verdi, 462 Pa. 370, 341 A.2d 125 (1975).

State constitutional provisions classifying cities by population and permitting lay judges to preside in some cities while requiring law-trained judges in others does not deny equal protection of the laws to an accused facing possible confinement on a drunk-driving charge before a lay judge where all people within the city and within cities of the same size are treated equally. North v. Russell, 427 U.S. 328, 96 S. Ct. 2709, 49 L. Ed. 2d 534 (1976).

2 Farrington v. Pinckney, 1 N.Y.2d 74, 150 N.Y.S.2d 585, 133 N.E.2d 817 (1956).

As to classification in a municipal ordinance, generally, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 306, 307.

3 Keenan v. San Francisco Unified School Dist., 34 Cal. 2d 708, 214 P.2d 382 (1950); City of Evanston v. Wazau, 364 Ill. 198, 4 N.E.2d 78, 106 A.L.R. 789 (1936).

4 Farrington v. Pinckney, 1 N.Y.2d 74, 150 N.Y.S.2d 585, 133 N.E.2d 817 (1956); Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941).

As to classification in ordinances, resolutions, and other municipal or local legislation, generally, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 306, 307.

5 Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

6 McLennan v. Aldredge, 223 Ga. 879, 159 S.E.2d 682 (1968).

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16B Am. Jur. 2d Constitutional Law § 902

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

c. Other Bases for Individual Classifications

§ 902. Time as bases for individual classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3035, 3043

The 14th Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time.[1] However, classifications involving time, like any other, must be reasonable, not arbitrary, and rationally related to a legitimate purpose.[2]

A grandfather clause which excepts from an ordinance's prohibition against a certain type of vending in a specified area those vendors who have continually operated the same businesses within such locality for a designated number of years prior to the adoption of the ordinance does not deny equal protection of the laws to a vendor who has so operated for a lesser number of years since, rather than proceeding by the immediate and absolute abolition of all such vendors, the city could rationally choose initially to eliminate vendors of more recent vintage.[3] It is generally held that consideration for existing property rights furnishes a legitimate basis for classification in legislation of a regulatory nature.[4]

Limitations based on the time that a claim is filed or an action commenced are common and are generally approved as reasonable classifications.[5]

Observation:

Neither the creation of financial incentives for individuals to establish and maintain a residence in Alaska, nor the encouragement of prudent management of Alaska's permanent fund, which consists of deposits of the state's mineral income, nor the apportionment of benefits in recognition of undefined contributions made by residents during their years of residency rationally justified a distinction that Alaska made between citizens who established their residence before 1959 and those who since became residents, and thus, Alaska's dividend distribution plan, under which Alaska distributed income derived from its natural resources to adult citizens in varying amounts based on the length of each citizen's residence, violated the Equal Protection Clause.[6]

Footnotes

1 Califano v. Webster, 430 U.S. 313, 97 S. Ct. 1192, 51 L. Ed. 2d 360 (1977); Garono v. State Bd. of Landscape Architect Examiners, 35 Ohio St. 2d 44, 64 Ohio Op. 2d 25, 298 N.E.2d 565 (1973).
The imposition of a death sentence for first-degree murder under a constitutional state statute in effect at the time of the defendant's trial, but not at the time of the killing, did not deny the defendant equal protection of the laws merely because all prisoners who had been sentenced to death under an earlier state statute in effect at the time of the killing by the defendant had been resentenced to life imprisonment after the state's highest court had held the old statute to be unconstitutional. Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290, 53 L. Ed. 2d 344 (1977).

2 Isakson v. Rickey, 550 P.2d 359 (Alaska 1976) (abrogated on other grounds by, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980)).
As to reasonable or arbitrary classifications, generally, see §§ 861, 862.

3 City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976).

4 Rasmussen v. Village of Bensenville, 56 Ill. App. 2d 119, 205 N.E.2d 631 (2d Dist. 1965).

5 Halverson v. Rolvaag, 274 Minn. 273, 143 N.W.2d 239 (1966) (overruled on other grounds by, Christensen v. Minneapolis Mun. Employees Retirement Bd., 331 N.W.2d 740 (Minn. 1983)).
As to the constitutionality of limitation statutes, generally, see Am. Jur. 2d, Limitation of Actions §§ 28 to 35.

6 Zobel v. Williams, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

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16B Am. Jur. 2d Constitutional Law § 903

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 903. Rule permitting classification of occupations, businesses, or pursuits, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3711

Since the establishment of regulations of a particular trade or business essential to the public health and safety is within the legislative capacity of the state in the exercise of its police power, the classification of the subjects of such legislation, so long as it has a reasonable basis and is not merely an arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to any person the equal protection of the laws.[1] Under the rational basis test for equal protection challenges, it is not the court's role to determine the best way to regulate an industry or to judge the wisdom or logic of legislative choices.[2] A group of persons with the same occupation or business is not an "independently identifiable" class for purposes of the Equal Protection Clause,[3] and legislation affecting alike all persons pursuing the same business under the same conditions is not class legislation.[4]

It is primarily for the state to select the kinds of business which are the subject of regulation, and the legislature has wide discretion in doing so;[5] as in other cases, legislative discretion in the matter of classification of businesses is not subject to judicial review unless such discretion appears to have been exercised arbitrarily and without any show of good reason.[6] Classifications that distinguish between commercial enterprises and noncommercial enterprises are upheld if they are rationally related to a legitimate state interest.[7]

The equal protection of the laws does not mean that all occupations which are called by the same name must be treated in the same way.[8] Any substantial difference between particular businesses may serve as a reasonable basis for a classification and be sufficient. For example, a state may validly distinguish between physicians and nonphysicians, and more specifically between ophthalmologists and optometrists.[9] The courts have upheld, as against attacks under the equal protection guarantee, classifications of businesses based upon such factors as location.[10]

Footnotes

1 Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935); Rebsamen Motor Co. v. Phillips, 226 Ark. 146, 289 S.W.2d 170, 57 A.L.R.2d 1256 (1956); Humphrey Chevrolet, Inc. v. City of Evanston, 7 Ill. 2d 402, 131 N.E.2d 70, 57 A.L.R.2d 969 (1955).
As to the regulation and prohibition of occupations and businesses under police power, generally, see §§ 355 to 367.
As to the regulation of occupations, trades, and professions, generally, see Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 to 69.

2 Monarch Beverage Co., Inc. v. Grubb, 138 F. Supp. 3d 1002 (S.D. Ind. 2015), aff'd, 861 F.3d 678 (7th Cir. 2017).

3 Lorenz v. State, 928 P.2d 1274 (Colo. 1996).

4 Hutchins v. Mayo, 143 Fla. 707, 197 So. 495, 133 A.L.R. 394 (1940); Avon Western Corp. v. Woolley, 266 A.D. 529, 42 N.Y.S.2d 690 (1st Dep't 1943), order aff'd, 291 N.Y. 687, 52 N.E.2d 587 (1943).

5 Lane Distributors v. Tilton, 7 N.J. 349, 81 A.2d 786 (1951).

6 Estrin v. Moss, 221 Tenn. 657, 430 S.W.2d 345 (1968).
As to legislative discretion and judicial review in matters of classification, generally, see §§ 846 to 860.

7 M.S. News Co. v. Casado, 721 F.2d 1281 (10th Cir. 1983).

8 Dominion Hotel v. State of Arizona, 249 U.S. 265, 39 S. Ct. 273, 63 L. Ed. 597 (1919).

9 Posner v. Rockefeller, 31 A.D.2d 352, 297 N.Y.S.2d 867 (3d Dep't 1969).

10 Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976); Walls v. Midland Carbon Co., 254 U.S. 300, 41 S. Ct. 118, 65 L. Ed. 276 (1920).

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16B Am. Jur. 2d Constitutional Law § 904

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 904. Rule permitting classification of occupations, businesses, or pursuits, generally—Limitations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3711

The power of the legislature to impose restrictions on a lawful calling must be exercised so that such restrictions must operate equally upon all persons pursuing the same business or profession under the same circumstances. The constitutionality of a statute cannot be sustained which selects particular individuals from a class or locality and subjects them to peculiar rules or imposes upon them special obligations or burdens from which others in the same locality or class are exempt.[1]

Generally, legislation regulating businesses must be sustained against constitutional challenges under the rational basis test if there is any conceivable basis for the legislature to believe that the means it has selected will tend to accomplish the desired end; even if the court is convinced that the political branch has made an improvident, ill-advised, or unnecessary decision, the court must uphold the act if it bears a rational relation to a legitimate governmental purpose.[2] Regulatory classification is permitted under the Equal Protection Clause when (1) it is based on differences between the business to be regulated and other businesses, and (2) when these differences are rationally related to the purpose of the legislation.[3]

Practice Tip:

Businesses seeking to challenge the constitutionality of economic regulations must do more than submit evidence which calls the articulated purposes of the legislation into doubt. They must demonstrate that the legislature could not reasonably have believed that the legislation would attain its aims.[4]

A statute containing a classification which attempts to give an economic advantage to those engaged in a business at an arbitrary date as against all those who enter the industry after that date is not a regulation of a business in the interest of the public and, unless otherwise shown to affect the public welfare in a manner which will create some reasonable basis for the distinction, is arbitrary and unreasonable.[5] Statutes prescribing rules and qualifications for persons who may thereafter seek to engage in occupations subject to the police power which are different from those rules prescribed as to persons already lawfully pursuing such occupations are not void as denying equal protection of the law.[6]

The Federal Constitution requires that a state treat those who deal with the federal government as well as it treats those with whom it deals itself.[7]

Footnotes

1 Truax v. Raich, 239 U.S. 33, 36 S. Ct. 7, 60 L. Ed. 131 (1915).
As to classification based on residency, see § 894.

2 Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 20 Fed. R. Serv. 3d 906 (11th Cir. 1991).
As to the rational basis test, see §§ 850 to 852.

3 In re North Carolina Pesticide Bd. File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E.2d 165 (1998).

4 Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 20 Fed. R. Serv. 3d 906 (11th Cir. 1991).

5 Mayflower Farms v. Ten Eyck, 297 U.S. 266, 56 S. Ct. 457, 80 L. Ed. 675 (1936).
As to classifications based on time, generally, see § 902.

6 In re Norwalk Call, 62 Cal. 2d 185, 41 Cal. Rptr. 666, 397 P.2d 426 (1964).

7 Phillips Chemical Co. v. Dumas Independent School Dist., 361 U.S. 376, 80 S. Ct. 474, 4 L. Ed. 2d 384 (1960).

16B Am. Jur. 2d Constitutional Law § 905

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 905. Classification among corporations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3711

Corporations as creatures of the law may, within reasonable limits, be divided into classes, and each class given such rights, capacities, and powers as the legislature may see fit. For this reason, a corporation may not necessarily have the right to complain of a discrimination in favor of other classes of corporations or that all or any of the rights of natural persons have not been given to it.[1]

Generally, the action of the state in so classifying corporations and in conferring different powers upon them is not in contravention of the 14th Amendment of the Federal Constitution.[2] Thus, for example, a statute requiring pawnbrokers to maintain certain information that was potentially relevant to the investigation of stolen property by law enforcement officials did not violate the pawnbrokers' equal protection rights, even though banks and other institutions that lent money were not subject to such disclosure requirements, as the legislature could rationally conclude that pawnshops, unlike these other institutions, provided a market for stolen property.[3]

Footnotes

1 Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 110 S. Ct. 1391, 108 L. Ed. 2d 652 (1990) (overruled on other grounds by, Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S. Ct. 876,

175 L. Ed. 2d 753 (2010)); Metropolitan Cas. Ins. Co. of New York v. Brownell, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935); Hoke Co., Inc. v. Tennessee Valley Authority, 661 F. Supp. 740 (W.D. Ky. 1987), order aff'd, 854 F.2d 820 (6th Cir. 1988).

As to classification of corporations, generally, see Am. Jur. 2d, Corporations §§ 27 to 44.

2 Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 110 S. Ct. 1391, 108 L. Ed. 2d 652 (1990) (overruled on other grounds by, Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)).

3 Winters v. Board of County Com'rs, 4 F.3d 848 (10th Cir. 1993).

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16B Am. Jur. 2d Constitutional Law § 906

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 906. Classification among corporations—Classification based on minority or female preference or disadvantaged business status

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3289, 3402, 3677

A classification among businesses competing for government contracts that, at least with regard to some contracts, favors so-called disadvantaged businesses or which sets aside a certain number or amount of such contracts for minority-owned or female-owned businesses may still be permissible in some instances, but such contracts, formerly judged under the rational relationship or intermediate scrutiny tests, must now be judged under the strict scrutiny test and must satisfy some compelling governmental interest in order to be held valid.[1]

Practice Tip:

When statistical disparity is relied on to justify a race, ethnicity, or gender-based program for awarding government contracts, and special qualifications are necessary to undertake the particular task, the relevant statistical pool used to evaluate the program under the Equal Protection Clause should include only those minorities qualified, willing, and able to provide the requested services. If the statistical analysis includes the proper pool of eligible minorities, any resulting disparity may constitute prima facie proof of a pattern or practice of discrimination.[2]

A city may use data describing construction industry discrimination in its metropolitan area rather than just data from the city itself in seeking to justify a minority preference contract scheme being challenged on equal protection grounds; any limitation of such evidence would ignore the economic reality that contracts are often awarded to firms situated in adjacent areas.[3]

Footnotes

1 Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

Small Business Act's 8(a) program for government contracting with socially and economically disadvantaged individuals was supported by a rational basis, as required for Act to survive the small business owner's equal protection challenge to the statute under rational basis review, where the Act sought to remedy the effects of racial or ethnic prejudice or cultural bias that impeded business formation and development and suppressed fair competition for government contracts, and counteracting discrimination was a legitimate government interest. Rothe Development, Inc. v. United States Department of Defense, 836 F.3d 57 (D.C. Cir. 2016).

Program established by United States Department of Transportation (DOT), designed to benefit disadvantaged business entities (DBE) in award of contracts in highway construction industry, was narrowly tailored to achieve its compelling interest in remedying systemic past and present race- and gender-discrimination, as required for program to survive strict scrutiny on equal protection challenge put forth by highway fencing and guardrail contractor owned and controlled by Caucasian males; recipients of federal funds could turn to race- and gender-conscious measures only after they attempted to meet their DBE participation goal by other means, regulations contained provisions that limited program's duration and ensured its substantial flexibility, program employed two-step goal-setting process that tied recipients' DBE participation goals to local market conditions, regulations sought to minimize burden on non-DBEs, DBE goals had to be tied to value of entire contract, and program was not overly inclusive. Midwest Fence Corporation v. United States Department of Transportation, 840 F.3d 932, 96 Fed. R. Serv. 3d 213 (7th Cir. 2016).

As to competitive bidding and awards of contracts, generally, see Am. Jur. 2d, Public Works and Contracts §§ 29 to 80.

2 Engineering Contractors Ass'n of South Florida, Inc. v. Metropolitan Dade County, 943 F. Supp. 1546 (S.D. Fla. 1996), judgment aff'd, 122 F.3d 895 (11th Cir. 1997).

3 Concrete Works of Colorado, Inc. v. City and County of Denver, 36 F.3d 1513 (10th Cir. 1994).

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16B Am. Jur. 2d Constitutional Law § 907

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 907. Classification among corporations and individuals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711

For many purposes, corporations may be put into one classification and individuals into another without violating the constitutional guarantees of equal protection.[1] However, corporations may not arbitrarily be selected in order to be subjected to a burden to which individuals would as appropriately be subject.[2] Legislation which is directed solely to corporations or a particular class of corporations and which eliminates from its operation individuals, where there is no basis for such discrimination, is unconstitutional as denying to corporations the equal protection of the laws.[3]

The legislature may impose a different punishment on a corporation for a criminal offense than is imposed on an individual for the same offense if the distinction in punishment is based upon reasonable grounds having relation to the crime and nature and condition of the parties; however, a statute providing different degrees of punishment for the same act when performed by officers of a particular class of corporations than when performed by other offenders violates a state constitutional requirement of uniformity of operation.[4]

A classification which arbitrarily favors a corporation as against an individual is invalid under the Federal Constitution.[5] Usually, however, legislation granting corporations privileges not conferred upon natural persons or subjecting natural persons to different burdens from those to which corporations are subjected has been sustained because of a rational and material basis for the classification.[6]

Footnotes

1 Chicago, R.I. & P. Ry. Co. v. Perry, 259 U.S. 548, 42 S. Ct. 524, 66 L. Ed. 1056 (1922); Prudential Ins. Co. of America v. Cheek, 259 U.S. 530, 42 S. Ct. 516, 66 L. Ed. 1044, 27 A.L.R. 27 (1922).
Nebraska constitutional amendment's exceptions to the general prohibition against farming or ranching by corporations and syndicates for family farm or ranch corporations or limited partnerships in which at least one family member was a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch did not violate the Equal Protection Clause; a rational basis existed for the disparate treatment of family farm corporations with resident farmers and family farm corporations without resident farmers. Jones v. Gale, 405 F. Supp. 2d 1066 (D. Neb. 2005), aff'd, 470 F.3d 1261 (8th Cir. 2006).
As to statutes denying to corporations the right to avail themselves of the defense of usury, see Am. Jur. 2d, Interest and Usury §§ 184 to 192.
As to the constitutionality of state antitrust acts, see Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 794 to 801.

2 Mallinckrodt Chemical Works v. State of Missouri ex rel. Jones, 238 U.S. 41, 35 S. Ct. 671, 59 L. Ed. 1192 (1915).

3 Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

4 Am. Jur. 2d, Corporations § 1829.

5 Frost v. Corporation Commission, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929).

6 Dillingham v. McLaughlin, 264 U.S. 370, 44 S. Ct. 362, 68 L. Ed. 742 (1924).

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16B Am. Jur. 2d Constitutional Law § 908

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 908. Classification among individuals and partnerships

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711

Subject to the requirement that there must be a proper basis for the classification[1] (that is, a basis bearing a reasonable relationship to the purpose of the classificatory legislation), the legislature may discriminate between individuals and partnerships.[2]

Footnotes

1 Corn v. Fort, 170 Tenn. 377, 95 S.W.2d 620, 106 A.L.R. 647 (1936).

2 People v. Simonsen, 64 Cal. App. 97, 220 P. 442 (2d Dist. 1923) (holding that it was not an unconstitutional discrimination to require a license for the sale of partnership securities where none was required for the sale of securities issued by individuals; the public required protection against the indiscriminate sale of partnership securities in somewhat the same measure in which it required protection against a similar sale of corporate securities).

16B Am. Jur. 2d Constitutional Law § 909

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 909. Classification of selling; method of selling

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711

A statute that regulates merely the right to sell does not impinge on fundamental rights, and such economic regulation is to be examined under the rational basis standard unless it uses invidious classifications.[1] Regulations, licenses, and taxes imposed upon persons whose business consists of selling merchandise often provide for classifications based upon some factor related to the business's particular kind or technique of selling. It is generally held that such legislation is constitutional if the particular manner of selling so classified is substantially different from other types of selling and forms a rational basis for the legislative distinction and if all persons so engaged and regulated are treated alike.[2] One such distinction is found in the inherent differences between wholesale and retail dealers.[3]

On the other hand, legislation which attempts to regulate or tax particular businesses, chiefly the selling of various kinds of merchandise, not on a basis that a different kind of selling is employed in one field of endeavor from that employed in another but solely on the theory that in the same kind of selling different methods are used, is generally held to be unconstitutional and discriminatory. Such a classification in reality attempts to treat differently persons in the same position, being based upon a subclassification which is unreasonable.[4]

An unfair sales act (prohibiting sales below cost) does not violate the Equal Protection Clause.[5]

Footnotes

1 Story v. Green, 978 F.2d 60 (2d Cir. 1992) (holding that the government has a legitimate interest in preserving the appearance of its streets, and its economic regulation of street peddlers is rationally related to that interest).

2 Reif v. Barrett, 355 Ill. 104, 188 N.E. 889 (1933) (overruled in part on other grounds by, Thorpe v. Mahin, 43 Ill. 2d 36, 250 N.E.2d 633 (1969)).

As to equal protection as applied to peddlers, generally, see Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 37 to 42.

3 Southwestern Oil Co. v. State of Tex., 217 U.S. 114, 30 S. Ct. 496, 54 L. Ed. 688 (1910); Cook v. Marshall County, 196 U.S. 261, 25 S. Ct. 233, 49 L. Ed. 471 (1905); State v. Levitan, 190 Wis. 646, 210 N.W. 111, 48 A.L.R. 434 (1926).

4 Bellingrath v. Town of Georgiana, 23 Ala. App. 111, 121 So. 458 (1929); City of Douglas v. South Georgia Grocery Co., 180 Ga. 519, 179 S.E. 768, 99 A.L.R. 700 (1935) (grocery); City of Danville v. The Quaker Maid, 211 Ky. 677, 278 S.W. 98, 43 A.L.R. 590 (1925) (grocery).

A statute requiring that the sale of beer and wine to retail vendors be for cash only violated the retailers' right to equal protection where vendors of hard liquor were given 10 days' credit, whereas beer and wine distributors could negotiate on credit with the manufacturer or brewery, and the retail sales of beer and wine could be made on credit. Castlewood Intern. Corp. v. Wynne, 294 So. 2d 321 (Fla. 1974).

5 Safeway Stores, Inc. v. Oklahoma Retail Grocers Ass'n, Inc., 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959).

As to sales-below-costs laws, generally, see Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1048 to 1065.

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16B Am. Jur. 2d Constitutional Law § 910

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 910. Classification of selling; method of selling—Articles sold

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711

Statutes which in the exercise of the police power impose restrictions or limitations on sales of a particular commodity or on all sales under certain circumstances which call for special regulation are generally upheld as valid and as not amounting to a denial of the equal protection of the laws. The sales so classified cover a wide variety of transactions.[1] Such laws place under the same restrictions and subject to like penalties and burdens all who manufacture or sell the articles embraced by their prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business.[2]

Footnotes

1 Advance-Rumely Thresher Co. v. Jackson, 287 U.S. 283, 53 S. Ct. 133, 77 L. Ed. 306, 87 A.L.R. 285 (1932) (farm machinery).
The Equal Protection Clause was not violated by a village ordinance restricting the operations of mobile food dispenser vehicles in the village on school days, while not imposing such limits on other vendors, where the regulation was rationally related to the prevention of delays in children's going to or coming from school, and other disturbances in residential areas. Vaden v. Village of Maywood, Ill., 809 F.2d 361 (7th Cir. 1987).
Wisconsin's butter-grading statute did not violate the Equal Protection Clause, despite the dairy producer's argument that there was no rational reason for the state to treat graded and ungraded butters differently; the producer failed to negate every conceivable basis for the statute, and even if the state was required to present

evidence supporting its market-based rationale, historical background of the statute strongly suggested that the statute was rationally related to the state's legitimate interest in stimulating demand and protecting Wisconsin's national reputation in the butter industry. Minerva Dairy, Inc. v. Harsdorf, 905 F.3d 1047 (7th Cir. 2018), cert. denied, 139 S. Ct. 2746, 204 L. Ed. 2d 1134 (2019).

2 Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 911. Classification of business pursuits of hazardous character

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711, 3721

An occupation that is dangerous to the public health or safety may be classified for regulatory purposes; an act regulating such an occupation is not unconstitutional for failing to include other occupations that are equally dangerous.[1] The fact that legislative exercise of the police power applies alike to all persons and all corporations engaging in a dangerous or hazardous calling or business relieves such legislation from the charge that there is a denial of equal protection under the law by reason of such enactments.[2] Moreover, in such cases if the power to classify because of the nature of the employment exists, the classification is not rendered invalid because it happens to include some persons not subject to a uniform degree of danger.[3]

Footnotes

1 Gregory v. Hecke, 73 Cal. App. 268, 238 P. 787 (3d Dist. 1925); County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992) (automobile graveyards).
As to the regulation of trades, callings, or occupations involving health nuisances, see Am. Jur. 2d, Health § 57.
As to the regulation of occupations, generally, see Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 to 69.

2 R.E. Sheehan Co. v. Shuler, 265 U.S. 371, 44 S. Ct. 548, 68 L. Ed. 1061, 35 A.L.R. 1056 (1924); Salt Lake City v. Industrial Commission of Utah, 58 Utah 314, 199 P. 152, 18 A.L.R. 259 (1921).
As to the regulation of occupations and businesses affected with a public interest under the police power, see §§ 359 to 361.

3 Mobile, Jackson & Kansas City R. Co. v. Turnipseed, 219 U.S. 35, 31 S. Ct. 136, 55 L. Ed. 78 (1910).

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16B Am. Jur. 2d Constitutional Law § 912

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XIII. Equal Protection of the Laws; Class Legislation

A. Guarantee of Equal Protection, in General

3. Particular Classifications

d. Classification of Occupations, Businesses, or Pursuits

§ 912. Classification of businesses employing particular numbers of persons

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3711

Classification of businesses in various regulations has often been sustained on the basis of the number of persons employed where such basis is not arbitrary or unreasonable.[1] Similar classifications affecting the financial responsibility of employers in social legislation relating to unemployment have also been sustained.[2]

Observation:

A private employer is covered by Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADEA) when it has at least 15 employees, and by the ADEA when it has at least 20 employees for certain required time periods of employment.[3]

Footnotes

1 Middleton v. Texas Power & Light Co., 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919); Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571, 35 S. Ct. 167, 59 L. Ed. 364 (1915).
As to classification based upon numbers, generally, see § 898.

2 Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937); W. H. H. Chamberlin, Inc., v. Andrews, 271 N.Y. 1, 5 Ohio Op. 306, 2 N.E.2d 22, 106 A.L.R. 1519 (1936), aff'd, 299 U.S. 515, 57 S. Ct. 122, 81 L. Ed. 380 (1936).

3 Am. Jur. 2d, Job Discrimination § 55.

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16B Am. Jur. 2d Constitutional Law XIII B Refs.

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XIII. Equal Protection of the Laws; Class Legislation

B. Protection Against Special Burdens or Privileges

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3035, 3036, 3039, 3041, 3043

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16B Am. Jur. 2d Constitutional Law § 913

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XIII. Equal Protection of the Laws; Class Legislation

B. Protection Against Special Burdens or Privileges

§ 913. Constitutional provisions prohibiting special burdens or privileges

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3035, 3036, 3039, 3041, 3043

The theory underlying constitutional requirements of equality is that all persons in like circumstances and like conditions must be treated alike both as to privileges conferred and as to liabilities or burdens imposed.[1] The organic principle of equality includes within its application a granted privilege as well as a regulated right. Equality of benefit is required no less than equality of burden.[2]

Every citizen should share the common benefits of a government the common burdens of which he or she is required to bear. Thus, legislation granting special privileges and imposing special burdens may conflict with the Equal Protection Clause of the Federal Constitution,[3] as well as with the more specific provisions of some state constitutions, which, although varying slightly in terminology, have the general effect of prohibiting the granting of special privileges or immunities.[4] So long as all are treated alike under like circumstances, however, neither the federal nor the state provisions are violated.[5] General rules that apply evenhandedly to all persons within a jurisdiction comply with the Equal Protection Clause;[6] only when a governmental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether equal protection is violated arise.[7] It would thus appear that particular laws granting special privileges and immunities must run the gauntlet between the provisions of the Federal Constitution which secure the equal protection of the laws and those of state constitutions which prohibit either special legislation or special laws granting privileges and immunities and also that the inherent limitations on legislative power may themselves be sufficient to nullify such laws.[8]

Observation:

There are two remedial alternatives when a statute, in violation of equal protection principles, benefits one class and excludes another from the benefit: a court may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. The choice between the two alternative remedial outcomes is governed by the legislature's intent, as revealed by the statute at hand. In considering whether the legislature would have struck an exception and applied the general rule equally to all, or instead, would have broadened the exception to cure the equal protection violation, a court should measure the intensity of commitment to the residual policy, that is, the main rule, not the exception, and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation.[9]

Footnotes

1 § 826.

2 Carozza v. Federal Finance & Credit Co., 149 Md. 223, 131 A. 332, 43 A.L.R. 1 (1925); Rosenblum v. Griffin, 89 N.H. 314, 197 A. 701, 115 A.L.R. 1367 (1938).

3 Silver v. Silver, 108 Conn. 371, 143 A. 240, 65 A.L.R. 943 (1928), aff'd, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221, 65 A.L.R. 939 (1929); Decker v. Pouvailsmith Corp., 252 N.Y. 1, 168 N.E. 442 (1929); Bowman v. Virginia State Entomologist, 128 Va. 351, 105 S.E. 141, 12 A.L.R. 1121 (1920).

4 § 914.

5 Frazier v. State Tax Commission, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479 (1937); Mammina v. Alexander Auto Service Co., 333 Ill. 158, 164 N.E. 173, 61 A.L.R. 649 (1928); Bolivar Tp. Board of Finance of Benton County v. Hawkins, 207 Ind. 171, 191 N.E. 158, 96 A.L.R. 271 (1934).

6 New York City Transit Authority v. Beazer, 440 U.S. 568, 99 S. Ct. 1355, 59 L. Ed. 2d 587 (1979); Flowell Elec. Ass'n, Inc. v. Rhodes Pump, LLC, 2015 UT 87, 361 P.3d 91 (Utah 2015).

7 New York City Transit Authority v. Beazer, 440 U.S. 568, 99 S. Ct. 1355, 59 L. Ed. 2d 587 (1979); Alexander v. Whitman, 114 F.3d 1392 (3d Cir. 1997).

8 Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N.E. 465, 50 A.L.R. 1518 (1927); State v. Savage, 96 Or. 53, 184 P. 567 (1919), opinion adhered to on denial of reh'g, 189 P. 427 (Or. 1920).

9 Sessions v. Morales-Santana, 137 S. Ct. 1678, 198 L. Ed. 2d 150 (2017) (observing that ordinarily, extension of benefits, rather than nullification, is the proper course).

16B Am. Jur. 2d Constitutional Law § 914

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XIII. Equal Protection of the Laws; Class Legislation

B. Protection Against Special Burdens or Privileges

§ 914. Constitutional provisions prohibiting special burdens or privileges—State constitutional provisions as to special privileges

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3035, 3036, 3039, 3041, 3043

Provisions to be found in the constitutions of many states have the general effect of prohibiting the grant of special privileges or immunities.[1] Such guarantees in the state constitutions are in nature simply a protection of those fundamental or inherent rights which are common to all citizens; they have been described as being the antithesis of the 14th Amendment since the latter operates to prevent abridgment by the states of the constitutional rights of citizens of the United States and the former prevents the state from granting special privileges or immunities and exemptions from otherwise common burdens. One prevents the curtailment of the constitutional rights of citizens, and the other prohibits the enlargement of the rights of some in discrimination against others.[2] However, the tests as to the granting of special privileges and immunities by a state are substantially similar to those used in determining whether the equal protection of the laws has been denied by a state.[3]

The general principle involved in constitutional equality guarantees forbidding special privileges or immunities seems to be that if legislation, without good reason and just basis, imposes a burden on one class which is not imposed on others in like circumstances or engaged in the same business, it is a denial of the equal protection of the laws to those subject to the burden and a grant of an immunity to those not subject to it.[4] Such provisions of the state constitutions permit classification if it is not arbitrary, is reasonable, and has a substantial basis and a proper relation to the objects sought to be accomplished.[5] A state constitutional provision that no member of the state shall be deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his or her peers, prohibits class legislation but does not forbid classification so long as it is not unreasonable or arbitrary.[6]

Observation:

In determining the scope of the class singled out by a statute for special burdens or benefits, a court will not confine its view to the terms of the specific statute but will judge its operation against the background of other legislative, administrative, and judicial directives which govern the legal rights of similarly situated persons.[7] A constitutional provision prohibiting the grant of special privileges applies to municipal ordinances as well as to acts of the legislature.[8]

CUMULATIVE SUPPLEMENT

Cases:

The purpose of state constitutional privileges and immunities clause is to limit the sort of special-interest favoritism that ran rampant during the territorial period. Wash. Const. art. 1, § 12. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 475 P.3d 164 (Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Frazier v. State Tax Commission, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479 (1937); Department of Mental Hygiene v. Kirchner, 62 Cal. 2d 586, 43 Cal. Rptr. 329, 400 P.2d 321 (1965); Young v. Indiana Dept. of Correction, 22 N.E.3d 716 (Ind. Ct. App. 2014); Behm v. City of Cedar Rapids, 922 N.W.2d 524 (Iowa 2019); State v. Davis, 237 Or. App. 351, 239 P.3d 1002 (2010), aff'd by an equally divided court, 353 Or. 166, 295 P.3d 617 (2013); Madison v. State, 161 Wash. 2d 85, 163 P.3d 757 (2007).
While there is no such express prohibition in the Florida Constitution, special privileges or immunities may be granted only to advance a public purpose as distinguished from a private interest or purpose. Liquor Store v. Continental Distilling Corp., 40 So. 2d 371 (Fla. 1949).

2 Bolivar Tp. Board of Finance of Benton County v. Hawkins, 207 Ind. 171, 191 N.E. 158, 96 A.L.R. 271 (1934); Savage v. Martin, 161 Or. 660, 91 P.2d 273 (1939).

3 State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931); Rosenblum v. Griffin, 89 N.H. 314, 197 A. 701, 115 A.L.R. 1367 (1938); Milwaukie Co. of Jehovah's Witnesses v. Mullen, 214 Or. 281, 330 P.2d 5, 74 A.L.R.2d 347 (1958).

4 Tipton County v. Rogers Locomotive & Machine Works, 103 U.S. 523, 26 L. Ed. 340, 1880 WL 18893 (1880); Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N.E. 465, 50 A.L.R. 1518 (1927).

5 Mansur v. City of Sacramento, 39 Cal. App. 2d 426, 103 P.2d 221 (3d Dist. 1940); People ex rel. Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46, 132 A.L.R. 511 (1940); Ferch v. Housing Authority of Cass County, 79 N.D. 764, 59 N.W.2d 849 (1953).
A state constitutional provision barring the grant of special privileges and immunities is violated by a statute embodying an arbitrary classification. Power, Inc. v. Huntley, 39 Wash. 2d 191, 235 P.2d 173 (1951).

6 Thomas v. Housing and Redevelopment Authority of Duluth, 234 Minn. 221, 48 N.W.2d 175 (1951).

7 Brown v. Merlo, 8 Cal. 3d 855, 106 Cal. Rptr. 388, 506 P.2d 212, 66 A.L.R.3d 505 (1973).

8 Acton v. Henderson, 150 Cal. App. 2d 1, 309 P.2d 481 (1st Dist. 1957).

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16B Am. Jur. 2d Constitutional Law § 915

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XIII. Equal Protection of the Laws; Class Legislation

B. Protection Against Special Burdens or Privileges

§ 915. Imposition of special burdens or liabilities as violating equal protection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3000, 3006, 3035, 3036, 3039, 3041, 3043

Legislation may impose special burdens upon defined classes in order to achieve permissible ends, consistent with the Equal Protection Clause.[1] In the exercise of the undoubted right of classification, it may often happen that some classes are subjected to regulations and some individuals are burdened with obligations which do not rest on other classes or other individuals not similarly situated, but this fact does not necessarily vitiate a statute, as it would practically defeat legislation if it were laid down as an invariable rule that a statute is void if it does not bring all within its scope or subject all to the same burdens.[2] It is of the essence of a classification that on one class are cast duties and burdens different from those resting on the general public and that the very idea of classification is that of inequality, so that the mere fact of inequality in no manner determines the matter of constitutionality.[3]

The general rule as to classification in the imposition of burdens is that no one may be subject to any greater burdens and charges than are imposed on others in the same calling or condition.[4] To put it another way, while many statutes impose classifications by declaring special burdens, and the Equal Protection Clause does not require all laws to apply uniformly to all people, equal protection does demand that laws treat alike all people who are similarly situated with respect to the legitimate purposes of the law.[5] If, under a particular classification, all persons affected by a statute are treated alike in the burdens imposed upon them, the legislation is not open to the objection that it denies to any the equal protection of the laws.[6] However, no burden can be imposed on one class of persons, natural or artificial, and arbitrarily selected, which is not in like conditions imposed on all other classes.[7]

A statute infringes the constitutional guarantee of equal protection if it singles out for discriminatory legislation particular individuals not forming an appropriate class[8] and imposes on them burdens or obligations or subjects them to rules from which

others are exempt.[9] Under the guise of the exercise of the police power, it is not competent either for the legislature or for a municipality to impose unequal burdens upon individual citizens.[10]

It should be noted that special burdens are often necessary for general benefits, such as for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another; they are designed not to impose unequal or unnecessary restrictions upon anyone but to promote with as little individual inconvenience as possible the general good.[11]

Footnotes

1 Jensen v. Hernandez, 864 F. Supp. 2d 869 (E.D. Cal. 2012), clarified on denial of reconsideration, 2012 WL 2571272 (E.D. Cal. 2012) and aff'd, 572 Fed. Appx. 540 (9th Cir. 2014); Barletta v. Rilling, 973 F. Supp. 2d 132 (D. Conn. 2013).

2 Cotting v. Godard, 183 U.S. 79, 22 S. Ct. 30, 46 L. Ed. 92 (1901).

3 International Harvester Co. v. State of Missouri ex inf. Attorney General, 234 U.S. 199, 34 S. Ct. 859, 58 L. Ed. 1276 (1914); People v. Monroe, 349 Ill. 270, 182 N.E. 439, 85 A.L.R. 605 (1932); Bratberg v. Advance-Rumely Thresher Co., 61 N.D. 452, 238 N.W. 552, 78 A.L.R. 1338 (1931).

4 Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921); Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394, 83 A.L.R. 1222 (1932).

5 Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

6 Staten Island Rapid Transit Ry. Co. v. Phoenix Indemnity Co., 281 U.S. 98, 50 S. Ct. 242, 74 L. Ed. 726 (1930); Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847, 103 A.L.R. 141 (1935); Buckler v. Hilt, 209 Ind. 541, 200 N.E. 219, 103 A.L.R. 901 (1936); Commonwealth v. Watson, 223 Ky. 427, 3 S.W.2d 1077, 58 A.L.R. 212 (1928).

7 Atlantic Coast Line R. Co. v. Ivey, 148 Fla. 680, 5 So. 2d 244, 139 A.L.R. 973 (1941); Dimke v. Finke, 209 Minn. 29, 295 N.W. 75 (1940); State v. Northwestern Elec. Co., 183 Wash. 184, 49 P.2d 8, 101 A.L.R. 189 (1935).

8 §§ 845 to 912.

9 Stewart Dry Goods Co. v. Lewis, 294 U.S. 550, 55 S. Ct. 525, 79 L. Ed. 1054 (1935).

10 Chickasha Cotton Oil Co. v. Cotton County Gin Co., 40 F.2d 846, 74 A.L.R. 1070 (C.C.A. 10th Cir. 1930); Beasley v. Cunningham, 171 Tenn. 334, 103 S.W.2d 18, 110 A.L.R. 306 (1937).

11 Mountain Timber Co. v. State of Washington, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917); Adler's Quality Bakery, Inc. v. Gaseteria, Inc., 32 N.J. 55, 159 A.2d 97, 81 A.L.R.2d 1041 (1960).

A city ordinance requiring a railroad to install and maintain at its own expense several automatic signals at street crossings is not arbitrary, unreasonable, and in violation of the Equal Protection Clause where it is shown that the crossings in question are hazardous, that accidents at these crossings have resulted in considerable expense to the railroad, and that devices are necessary for public safety and convenience in light of the community's growth. Southern Ry. Co. v. City of Morristown, 448 F.2d 288 (6th Cir. 1971).

A state act imposing upon oil terminal operators, as licensees, absolute liability for oil spills instead of liability based on fault imposed on other shore facilities and vessels was not unconstitutionally discriminatory in violation of the Equal Protection Clause. Portland Pipe Line Corp. v. Environmental Imp. Com'n, 307 A.2d 1 (Me. 1973).

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